Volume 1

STATUTES OF CALIFORNIA

AND DIGESTS OF MEASURES

1998

Constitution of 1879 as Amended

Measures Submitted to Vote of Electors,
Primary Election, June 2, 1998
and General Election, November 3, 1998

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

1997–98 Regular Session
1997–98 First Extraordinary Session

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EFFECTIVE DATES

Regular Session

The 1997–98 Regular Session reconvened on January 5, 1998, and adjourned *sine die* on November 30, 1998. Statutes enacted in 1998, other than those taking immediate effect, will become effective January 1, 1999.

The effective date of a joint or concurrent resolution is the date it is filed with the Secretary of State.

An initiative statute or referendum or a constitutional amendment proposed by the Legislature and adopted by the people takes effect the day after the election unless the measure provides otherwise.

Statutes Which Take Effect Immediately. An urgency statute, and a statute calling an election, providing for a tax levy, or making an appropriation for the usual current expenses of the state may take effect immediately. Such a statute becomes *effective* on the date it is filed with the Secretary of State.

Operative Date. The provisions of a statute normally become operative on the date it takes effect. However, any statute may, by its own terms, delay the *operation* of its provisions until the happening of some contingency or until a specified time. Also, a later statute or a general provision in a particular code may delay the operation of a statute to a time after its effective date.

Extraordinary Sessions

An urgency statute enacted at a special session of the Legislature takes effect immediately, as outlined above, and the same rules apply with respect to a delayed *operative* date. A nonurgency statute takes effect on the 91st day after adjournment of the special session at which the bill was passed. The effective date of a concurrent resolution is the date it is filed with the Secretary of State.

The 1997–98 First Extraordinary Session reconvened on January 5, 1998, and adjourned *sine die* on September 1, 1998. Statutes enacted at an extraordinary session, other than those taking immediate effect, will become effective on the 91st day after adjournment. The 91st day after adjournment is December 1, 1998. Please refer to the preceding year's Statutes and Amendments to the Codes for statutes enacted prior to the recovening date.

CONSTITUTIONAL AMENDMENTS

Adopted Since Publication of Statutes of 1997

NOTE: Since the publication of the Statutes of 1997, the following changes were adopted at the Primary Election, June 2, 1998, and the General Election, November 3, 1998:

Article	*Section*	*Change*	*Constitutional amendment number*	*Year*	*Resolution chapter number*	*Proposition number*	*Subject*
I	16	Amendment	SCA 4	1996	36	220	Courts. Superior and Municipal Court Consolidation.
II	8	Amendment	SCA 18	1996	34	219	Ballot Measures. Application.
	11	Amendment	SCA 18	1996	34	219	Ballot Measures. Application.
IV	8.5	Addition	SCA 18	1996	34	219	Ballot Measures. Application.
VI	1	Amendment	SCA 4	1996	36	220	Courts. Superior and Municipal Court Consolidation.
	4	Amendment	SCA 4	1996	36	220	Courts. Superior and Municipal Court Consolidation.
	5	Amendment	SCA 4	1996	36	220	Courts. Superior and Municipal Court Consolidation.
	6	Amendment	SCA 4	1996	36	220	Courts. Superior and Municipal Court Consolidation.
	8	Amendment	SCA 4	1996	36	220	Courts. Superior and Municipal Court Consolidation.
	10	Amendment	SCA 4	1996	36	220	Courts. Superior and Municipal Court Consolidation.

CONSTITUTIONAL AMENDMENTS

Adopted Since Publication of Statutes of 1997—Continued

Article	*Section*	*Change*	*Constitutional amendment number*	*Year*	*Resolution chapter number*	*Proposition number*	*Subject*
VI (cont.)							
	11	Amendment	SCA 4	1996	36	220	Courts. Superior and Municipal Court Consolidation.
	16	Amendment	SCA 4	1996	36	220	Courts. Superior and Municipal Court Consolidation.
	18.1	Addition	SCA 19	1996	54	221	Subordinate Judicial Officers. Discipline.
	23	Addition	SCA 4	1996	36	220	Courts. Superior and Municipal Court Consolidation.
XI	7.5	Addition	SCA 18	1996	34	219	Ballot Measures. Application.
XIII	29	Amendment	ACA 10	1998	133	11	Local Sales and Use Taxes—Revenue Sharing.
XIII A	2	Amendment	ACA 22	1998	60	1	Property Taxes: Contaminated Property.
	7	Addition	Initiative Measure	1998	—	10	State and County Early Childhood Development Programs. Additional Tobacco Surtax.
XIII B	13	Addition	Initiative Measure	1998	—	10	State and County Early Childhood Development Programs. Additional Tobacco Surtax.
XIX	6	Repeal and Addition	ACA 30	1998	77	2	Transportation: Funding.
XIX A	All	Addition	ACA 30	1998	77	2	Transportation: Funding.

PROPOSED CHANGES IN CONSTITUTION

NOTE: The following proposed changes were defeated at the Primary Election, June 2, 1998:

Article	*Section*	*Proposed change*	*Constitutional amendment number*	*Year*	*Resolution chapter number*	*Proposition number*	*Subject*
VII	12	Addition	Initiative Measure	1998	—	224	State-Funded Design and Engineering Services.

CONSTITUTION OF THE STATE OF CALIFORNIA

1879

CONSTITUTION OF THE STATE OF CALIFORNIA*

AS AMENDED AND IN FORCE NOVEMBER 3, 1998

PREAMBLE

We, the People of the State of California, grateful to Almighty God for our freedom, in order to secure and perpetuate its blessings, do establish this Constitution.

ARTICLE I

DECLARATION OF RIGHTS

SECTION 1. [*Repealed November 5, 1974. See Section 1, below.*]

[*Inalienable Rights*]

SECTION 1. All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy. [*New section adopted November 5, 1974.*]

[*Liberty of Speech and of the Press—Newspersons' Refusal to Disclose Information Sources Not Adjudged in Contempt*]

SEC. 2. (a) Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press.

(b) A publisher, editor, reporter, or other person connected with or employed upon a newspaper, magazine, or other periodical publication, or by a press association or wire service, or any person who has been so connected or employed, shall not be adjudged in contempt by a judicial, legislative, or administrative body, or any other body having the power to issue subpoenas, for refusing to disclose the source of any information procured while so connected or employed for publication in a newspaper, magazine or other periodical publication, or for refusing to disclose any unpublished information obtained or prepared in gathering, receiving or processing of information for communication to the public.

Nor shall a radio or television news reporter or other person connected with or employed by a radio or television station, or any person who has been so connected or employed, be so adjudged in contempt for refusing to disclose the source of any information procured while so connected or employed for news or news commentary purposes on radio or television, or for refusing to disclose any unpublished information obtained or prepared in gathering, receiving or processing of information for communication to the public.

* Adopted by the people on May 7, 1879. Certain spelling and capitalization variances reflect State Printer's style in effect at time of adoption of amendments.

As used in this subdivision, ''unpublished information'' includes information not disseminated to the public by the person from whom disclosure is sought, whether or not related information has been disseminated and includes, but is not limited to, all notes, outtakes, photographs, tapes or other data of whatever sort not itself disseminated to the public through a medium of communication, whether or not published information based upon or related to such material has been disseminated. [*As amended June 3, 1980.*]

[*Right to Assemble and to Petition*]

SEC. 3. The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good. [*New section adopted November 5, 1974.*]

SEC. 4. [*Repealed November 5, 1974. See Section 4, below.*]

[*Liberty of Conscience*]

SEC. 4. Free exercise and enjoyment of religion without discrimination or preference are guaranteed. This liberty of conscience does not excuse acts that are licentious or inconsistent with the peace or safety of the State. The Legislature shall make no law respecting an establishment of religion.

A person is not incompetent to be a witness or juror because of his or her opinions on religious beliefs. [*New section adopted November 5, 1974.*]

SEC. 5. [*Repealed November 5, 1974. See Section 5, below.*]

[*The Military*]

SEC. 5. The military is subordinate to civil power. A standing army may not be maintained in peacetime. Soldiers may not be quartered in any house in wartime except as prescribed by law, or in peacetime without the owner's consent. [*New section adopted November 5, 1974.*]

SEC. 6. [*Repealed November 5, 1974. See Section 6, below.*]

[*Slavery Prohibited*]

SEC. 6. Slavery is prohibited. Involuntary servitude is prohibited except to punish crime. [*New section adopted November 5, 1974.*]

[*Due Process of Law—Use of Pupil School Assignment or Pupil Transportation*]

SEC. 7. (a) A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws; provided, that nothing contained herein or elsewhere in this Constitution imposes upon the State of California or any public entity, board, or official any obligations or responsibilities which exceed those imposed by the Equal Protection Clause of the 14th Amendment to the United States Constitution with respect to the use of pupil school assignment or pupil trans-

portation. In enforcing this subdivision or any other provision of this Constitution, no court of this State may impose upon the State of California or any public entity, board, or official any obligation or responsibility with respect to the use of pupil school assignment or pupil transportation, (1) except to remedy a specific violation by such party that would also constitute a violation of the Equal Protection Clause of the 14th Amendment to the United States Constitution, and (2) unless a federal court would be permitted under federal decisional law to impose that obligation or responsibility upon such party to remedy the specific violation of the Equal Protection Clause of the 14th Amendment of the United States Constitution.

Except as may be precluded by the Constitution of the United States, every existing judgment, decree, writ, or other order of a court of this State, whenever rendered, which includes provisions regarding pupil school assignment or pupil transportation, or which requires a plan including any such provisions shall, upon application to a court having jurisdiction by any interested person, be modified to conform to the provisions of this subdivision as amended, as applied to the facts which exist at the time of such modification.

In all actions or proceedings arising under or seeking application of the amendments to this subdivision proposed by the Legislature at its 1979–80 Regular Session, all courts, wherein such actions or proceedings are or may hereafter be pending, shall give such actions or proceedings first precedence over all other civil actions therein.

Nothing herein shall prohibit the governing board of a school district from voluntarily continuing or commencing a school integration plan after the effective date of this subdivision as amended.

In amending this subdivision, the Legislature and people of the State of California find and declare that this amendment is necessary to serve compelling public interests, including those of making the most effective use of the limited financial resources now and prospectively available to support public education, maximizing the educational opportunities and protecting the health and safety of all public school pupils, enhancing the ability of parents to participate in the educational process, preserving harmony and tranquility in this State and its public schools, preventing the waste of scarce fuel resources, and protecting the environment.

[*Privileges and Immunities*]

(b) A citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens. Privileges or immunities granted by the Legislature may be altered or revoked. [*As amended November 6, 1979.*]

[*Sex, Race, Etc., Not a Disqualification for Business*]

SEC. 8. A person may not be disqualified from entering or pursuing a business, profession, vocation, or employment because of sex, race, creed, color, or national or ethnic origin. [*Former Section 18 of Article XX, as renumbered and amended November 5, 1974.*]

SEC. 9. [*Repealed November 5, 1974. See Section 9, below.*]

[*Bill of Attainder—Ex Post Facto Law—Obligation of Contract*]

SEC. 9. A bill of attainder, ex post facto law, or law impairing the obligation of contracts may not be passed. [*New section adopted November 5, 1974.*]

SEC. 10. [*Repealed November 5, 1974. See Section 10, below.*]

[*Detention of Witnesses—No Imprisonment for Debt*]

SEC. 10. Witnesses may not be unreasonably detained. A person may not be imprisoned in a civil action for debt or tort, or in peacetime for a militia fine. [*New section adopted November 5, 1974.*]

SEC. 11. [*Repealed November 5, 1974. See Section 11, below.*]

[*Suspension of Habeas Corpus*]

SEC. 11. Habeas corpus may not be suspended unless required by public safety in cases of rebellion or invasion. [*New section adopted November 5, 1974.*]

[*Bail—Release on Own Recognizance*]

SEC. 12. A person shall be released on bail by sufficient sureties, except for:

(a) Capital crimes when the facts are evident or the presumption great;

(b) Felony offenses involving acts of violence on another person, or felony sexual assault offenses on another person, when the facts are evident or the presumption great and the court finds based upon clear and convincing evidence that there is a substantial likelihood the person's release would result in great bodily harm to others; or

(c) Felony offenses when the facts are evident or the presumption great and the court finds based on clear and convinving evidence that the person has threatened another with great bodily harm and that there is a substantial likelihood that the person would carry out the threat if released.

Excessive bail may not be required. In fixing the amount of bail, the court shall take into consideration the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case.

A person may be released on his or her own recognizance in the court's discretion. [*As amended November 8, 1994.*]

SEC. 13. [*Repealed November 5, 1974. See Section 13, below.*]

[*Unreasonable Seizure and Search—Warrant*]

SEC. 13. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches may not be violated; and a warrant may not issue except on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized. [*New section adopted November 5, 1974.*]

SEC. 14. [*Repealed November 5, 1974. See Section 14, below.*]

[*Felony Defendant Before Magistrate—Prosecutions*]

SEC. 14. Felonies shall be prosecuted as provided by law, either by indictment or, after examination and commitment by a magistrate, by information.

A person charged with a felony by complaint subscribed under penalty of perjury and on file in a court in the county where the felony is triable shall be taken without unnecessary delay before a magistrate of that court. The magistrate shall immediately give the defendant a copy of the complaint, inform the defendant of the defendant's right to counsel, allow the defendant a reasonable time to send for counsel, and on the defendant's request read the complaint to the defendant. On the defendant's request the magistrate shall require a peace officer to transmit within the county where the court is located a message to counsel named by defendant.

A person unable to understand English who is charged with a crime has a right to an interpreter throughout the proceedings. [*New section adopted November 5, 1974.*]

[*Felony—Prosecution by Indictment*]

SEC. 14.1. If a felony is prosecuted by indictment, there shall be no postindictment preliminary hearing. [*New section adopted June 5, 1990. Initiative measure.*]

SEC. 14½. [*Repealed November 5, 1974.*]

SEC. 15. [*Repealed November 5, 1974. See Section 15, below.*]

[*Criminal Prosecutions—Rights of Defendant—Due Process of Law—Jeopardy—Depositions—Assistance of Counsel*]

SEC. 15. The defendant in a criminal cause has the right to a speedy public trial, to compel attendance of witnesses in the defendant's behalf, to have the assistance of counsel for the defendant's defense, to be personally present with counsel, and to be confronted with the witnesses against the defendant. The Legislature may provide for the deposition of a witness in the presence of the defendant and the defendant's counsel.

Persons may not twice be put in jeopardy for the same offense, be compelled in a criminal cause to be a witness against themselves, or be deprived of life, liberty, or property without due process of law. [*New section adopted November 5, 1974.*]

[*Trial by Jury*]

SEC. 16. Trial by jury is an inviolate right and shall be secured to all, but in a civil cause three-fourths of the jury may render a verdict. A jury may be waived in a criminal cause by the consent of both parties expressed in open court by the defendant and the defendant's counsel. In a civil cause a jury may be waived by the consent of the parties expressed as prescribed by statute.

[*Number of Jurors in Civil Trials*]

In civil causes the jury shall consist of 12 persons or a lesser number agreed on by the parties in open court. In civil causes other than causes within the appellate jurisdiction of the court of appeal the Legislature may provide that the jury shall consist of eight persons or a lesser number agreed on by the parties in open court.

[*Number of Jurors in Criminal Trials*]

In criminal actions in which a felony is charged, the jury shall consist of 12 persons. In criminal actions in which a misdemeanor is charged, the jury shall consist of 12 persons or a lesser number agreed on by the parties in open court. [*As amended June 2, 1998.*]

SEC. 17. [*Repealed November 5, 1974. See Section 17, below.*]

[*Unusual Punishment—Excessive Fines*]

SEC. 17. Cruel or unusual punishment may not be inflicted or excessive fines imposed. [*New section adopted November 5, 1974.*]

SEC. 18. [*Repealed November 5, 1974. See Section 18, below.*]

[*Treason*]

SEC. 18. Treason against the State consists only in levying war against it, adhering to its enemies, or giving them aid and comfort. A person may not be convicted of treason except on the evidence of two witnesses to the same overt act or by confession in open court. [*New section adopted November 5, 1974.*]

SEC. 19. [*Repealed November 5, 1974. See Section 19, below.*]

[*Eminent Domain*]

SEC. 19. Private property may be taken or damaged for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. The Legislature may provide

for possession by the condemnor following commencement of eminent domain proceedings upon deposit in court and prompt release to the owner of money determined by the court to be the probable amount of just compensation. [*New section adopted November 5, 1974.*]

SEC. 20. [*Repealed November 5, 1974. See Section 20, below.*]

[*Rights of Noncitizens*]

SEC. 20. Noncitizens have the same property rights as citizens. [*New section adopted November 5, 1974.*]

SEC. 21. [*Repealed November 5, 1974. See Section 21, below.*]

[*Separate Property of Husband and Wife*]

SEC. 21. Property owned before marriage or acquired during marriage by gift, will, or inheritance is separate property. [*Former Section 8 of Article XX, as renumbered November 5, 1974.*]

SEC. 22. [*Repealed November 5, 1974. See Section 22, below.*]

[*No Property Qualification for Electors*]

SEC. 22. The right to vote or hold office may not be conditioned by a property qualification. [*New section adopted November 5, 1974.*]

SEC. 23. [*Repealed November 5, 1974. See Section 23, below.*]

[*Grand Juries*]

SEC. 23. One or more grand juries shall be drawn and summoned at least once a year in each county. [*New section adopted November 5, 1974.*]

[*Constitutional Rights—Rights Reserved*]

SEC. 24. Rights guaranteed by this Constitution are not dependent on those guaranteed by the United States Constitution.

In criminal cases the rights of a defendant to equal protection of the laws, to due process of law, to the assistance of counsel, to be personally present with counsel, to a speedy and public trial, to compel the attendance of witnesses, to confront the witnesses against him or her, to be free from unreasonable searches and seizures, to privacy, to not be compelled to be a witness against himself or herself, to not be placed twice in jeopardy for the same offense, and to not suffer the imposition of cruel or unusual punishment, shall be construed by the courts of this State in a manner consistent with the Constitution of the United States. This Constitution shall not be construed by the courts to afford greater rights to criminal defendants than those afforded by the Constitution of the United States, nor shall it be construed to afford greater rights to minors in juvenile proceedings on criminal causes than those afforded by the Constitution of the United States.

This declaration of rights may not be construed to impair or deny others retained by the people. [*As amended June 5, 1990. Initiative measure.*]

[*Right to Fish*]

SECTION 25. The people shall have the right to fish upon and from the public lands of the State and in the waters thereof, excepting upon lands set aside for fish hatcheries, and no land owned by the State shall ever be sold or transferred without reserving in the people the absolute right to fish thereupon; and no law shall ever be passed making it a crime for the people to enter upon the public lands within this State for the purpose of fishing in any water containing fish that have been planted therein by the State; *provided*, that the Legislature may by statute, provide for the season when and the conditions under which the different species of fish may be taken. [*New section adopted November 8, 1910.*]

SEC. 26. [*Renumbered Section 1 of Article II June 8, 1976. See Section 26, below.*]

[*Constitution Mandatory and Prohibitory*]

SEC. 26. The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise. [*Former Section 28, as renumbered June 8, 1976.*]

SEC. 26a. [*Repealed November 8, 1949.*]

[*Death Penalty*]

SEC. 27. All statutes of this State in effect on February 17, 1972, requiring, authorizing, imposing, or relating to the death penalty are in full force and effect, subject to legislative amendment or repeal by statute, initiative, or referendum.

The death penalty provided for under those statutes shall not be deemed to be, or to constitute, the infliction of cruel or unusual punishments within the meaning of Article 1, Section 6 nor shall such punishment for such offenses be deemed to contravene any other provision of this constitution. [*New section adopted November 7, 1972. Initiative measure.*]

[*"The Victims' Bill of Rights"*]

SEC. 28. (a) The People of the State of California find and declare that the enactment of comprehensive provisions and laws ensuring a bill of rights for victims of crime, including safeguards in the criminal justice system to fully protect those rights, is a matter of grave statewide concern.

The rights of victims pervade the criminal justice system, encompassing not only the right to restitution from the wrongdoers for financial losses suffered as a result of criminal acts, but also the more basic expectation that persons who commit felonious acts causing injury to innocent victims

will be appropriately detained in custody, tried by the courts, and sufficiently punished so that the public safety is protected and encouraged as a goal of highest importance.

Such public safety extends to public primary, elementary, junior high, and senior high school campuses, where students and staff have the right to be safe and secure in their persons.

To accomplish these goals, broad reforms in the procedural treatment of accused persons and the disposition and sentencing of convicted persons are necessary and proper as deterrents to criminal behavior and to serious disruption of people's lives.

(b) Restitution. It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to restitution from the persons convicted of the crimes for losses they suffer.

Restitution shall be ordered from the convicted persons in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss, unless compelling and extraordinary reasons exist to the contrary. The Legislature shall adopt provisions to implement this section during the calendar year following adoption of this section.

(c) Right to Safe Schools. All students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure and peaceful.

(d) Right to Truth-in-Evidence. Except as provided by statute hereafter enacted by a two-thirds vote of the membership in each house of the Legislature, relevant evidence shall not be excluded in any criminal proceeding, including pretrial and post conviction motions and hearings, or in any trial or hearing of a juvenile for a criminal offense, whether heard in juvenile or adult court. Nothing in this section shall affect any existing statutory rule of evidence relating to privilege or hearsay, or Evidence Code, Sections 352, 782 or 1103. Nothing in this section shall affect any existing statutory or constitutional right of the press.

(e) Public Safety Bail. A person may be released on bail by sufficient sureties, except for capital crimes when the facts are evident or the presumption great. Excessive bail may not be required. In setting, reducing or denying bail, the judge or magistrate shall take into consideration the protection of the public, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case. Public safety shall be the primary consideration.

A person may be released on his or her own recognizance in the court's discretion, subject to the same factors considered in setting bail. However, no person charged with the commission of any serious felony shall be released on his or her own recognizance.

Before any person arrested for a serious felony may be released on bail, a hearing may be held before the magistrate or judge, and the prosecuting attorney shall be given notice and reasonable opportunity to be heard on the matter.

When a judge or magistrate grants or denies bail or release on a person's own recognizance, the reasons for that decision shall be stated in the record and included in the court's minutes.

(f) Use of Prior Convictions. Any prior felony conviction of any person in any criminal proceeding, whether adult or juvenile, shall subsequently be used without limitation for purposes of impeachment or enhancement of sentence in any criminal proceeding. When a prior felony conviction is an element of any felony offense, it shall be proven to the trier of fact in open court.

(g) As used in this article, the term ''serious felony'' is any crime defined in Penal Code, Section 1192.7(c). [*New section adopted June 8, 1982. Initiative measure.*]

[*Criminal Cases—Due Process of Law—Speedy and Public Trial*]

SEC. 29. In a criminal case, the people of the State of California have the right to due process of law and to a speedy and public trial. [*New section adopted June 5, 1990. Initiative measure.*]

[*Criminal Cases—Jointure-Hearsay Evidence—Discovery*]

SEC. 30. (a) This Constitution shall not be construed by the courts to prohibit the joining of criminal cases as prescribed by the Legislature or by the people through the initiative process.

(b) In order to protect victims and witnesses in criminal cases, hearsay evidence shall be admissible at preliminary hearings, as prescribed by the Legislature or by the people through the initiative process.

(c) In order to provide for fair and speedy trials, discovery in criminal cases shall be reciprocal in nature, as prescribed by the Legislature or by the people through the initiative process. [*New section adopted June 5, 1990. Initiative measure.*]

[*Prohibition Against Discrimination or Preferential Treatment*]

SEC. 31. (a) The State shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.

(b) This section shall apply only to action taken after the section's effective date.

(c) Nothing in this section shall be interpreted as prohibiting bona fide qualifications based on sex which are reasonably necessary to the normal operation of public employment, public education, or public contracting.

(d) Nothing in this section shall be interpreted as invalidating any court order or consent decree which is in force as of the effective date of this section.

(e) Nothing in this section shall be interpreted as prohibiting action which must be taken to establish or maintain eligibility for any federal program, where ineligibility would result in a loss of federal funds to the State.

(f) For the purposes of this section, ''State'' shall include, but not necessarily be limited to, the State itself, any city, county, city and county, public university system, including the University of California, community college district, school district, special district, or any other political subdivision or governmental instrumentality of or within the State.

(g) The remedies available for violations of this section shall be the same, regardless of the injured party's race, sex, color, ethnicity, or national origin, as are otherwise available for violations of then-existing California antidiscrimination law.

(h) This section shall be self-executing. If any part or parts of this section are found to be in conflict with federal law or the United States Constitution, the section shall be implemented to the maximum extent that federal law and the United States Constitution permit. Any provision held invalid shall be severable from the remaining portions of this section. [*New section adopted November 5, 1996. Initiative measure.*]

ARTICLE II. [*Repealed November 7, 1972. See Article II, below.*]

ARTICLE II*

VOTING, INITIATIVE AND REFERENDUM, AND RECALL

[*Heading as amended June 8, 1976.*]

SEC. 1. [*Renumbered Section 2 June 8, 1976. See Section 1, below.*]

[*Purpose of Government*]

SECTION 1. All political power is inherent in the people. Government is instituted for their protection, security, and benefit, and they have the right to alter or reform it when the public good may require. [*Former Section 26 of Article I, as renumbered June 8, 1976.*]

SEC. 1½. [*Repealed November 7, 1972.*]

SEC. 2. [*Renumbered Section 3 June 8, 1976. See Section 2, below.*]

[*Right to Vote*]

SEC. 2. A United States citizen 18 years of age and resident in this State may vote. [*Former Section 1, as renumbered June 8, 1976.*]

* New Article II adopted November 7, 1972.

SEC. 2.5. [*Repealed November 7, 1972.*]

SEC. 2¾. [*Repealed November 7, 1972.*]

SEC. 3. [*Renumbered Section 4 June 8, 1976. See Section 3, below.*]

[*Residence—Registration—Free Elections*]

SEC. 3. The Legislature shall define residence and provide for registration and free elections. [*Former Section 2, as renumbered June 8, 1976.*]

SEC. 4. [*Renumbered Section 5 June 8, 1976. See Section 4, below.*]

[*Improper Practices That Affect Elections—Mentally Incompetent, Etc.*]

SEC. 4. The Legislature shall prohibit improper practices that affect elections and shall provide for the disqualification of electors while mentally incompetent or imprisoned or on parole for the conviction of a felony. [*Former Section 3, as renumbered June 8, 1976.*]

SEC. 5. [*Renumbered Section 6 June 8, 1976. See Section 5, below.*]

[*Primary Elections for Partisan Offices—Open Presidential Primary*]

SEC. 5. The Legislature shall provide for primary elections for partisan offices, including an open presidential primary whereby the candidates on the ballot are those found by the Secretary of State to be recognized candidates throughout the nation or throughout California for the office of President of the United States, and those whose names are placed on the ballot by petition, but excluding any candidate who has withdrawn by filing an affidavit of noncandidacy. [*Former Section 4, as renumbered June 8, 1976.*]

[*Nonpartisan Offices*]

SEC. 6. (a) All judicial, school, county, and city offices shall be nonpartisan.

(b) No political party or party central committee may endorse, support, or oppose a candidate for nonpartisan office. [*As amended June 3, 1986.*]

[*Voting—Secret*]

SEC. 7. Voting shall be secret. [*Former Section 6, as renumbered June 8, 1976.*]

[*Initiative*]

SEC. 8. (a) The initiative is the power of the electors to propose statutes and amendments to the Constitution and to adopt or reject them.

(b) An initiative measure may be proposed by presenting to the Secretary of State a petition that sets forth the text of the proposed statute or amendment to the Constitution and is certified to have been signed by electors equal in number to 5 percent in the case of a statute, and 8 percent

in the case of an amendment to the Constitution, of the votes for all candidates for Governor at the last gubernatorial election.

(c) The Secretary of State shall then submit the measure at the next general election held at least 131 days after it qualifies or at any special statewide election held prior to that general election. The Governor may call a special statewide election for the measure.

(d) An initiative measure embracing more than one subject may not be submitted to the electors or have any effect.

(e) An initiative measure may not include or exclude any political subdivision of the State from the application or effect of its provisions based upon approval or disapproval of the initiative measure, or based upon the casting of a specified percentage of votes in favor of the measure, by the electors of that political subdivision.

(f) An initiative measure may not contain alternative or cumulative provisions wherein one or more of those provisions would become law depending upon the casting of a specified percentage of votes for or against the measure. [*As amended June 2, 1998.*]

[*Referendum*]

SEC. 9. (a) The referendum is the power of the electors to approve or reject statutes or parts of statutes except urgency statutes, statutes calling elections, and statutes providing for tax levies or appropriations for usual current expenses of the State.

(b) A referendum measure may be proposed by presenting to the Secretary of State, within 90 days after the enactment date of the statute, a petition certified to have been signed by electors equal in number to 5 percent of the votes for all candidates for Governor at the last gubernatorial election, asking that the statute or part of it be submitted to the electors. In the case of a statute enacted by a bill passed by the Legislature on or before the date the Legislature adjourns for a joint recess to reconvene in the second calendar year of the biennium of the legislative session, and in the possession of the Governor after that date, the petition may not be presented on or after January 1 next following the enactment date unless a copy of the petition is submitted to the Attorney General pursuant to subdivision (d) of Section 10 of Article II before January 1.

(c) The Secretary of State shall then submit the measure at the next general election held at least 31 days after it qualifies or at a special statewide election held prior to that general election. The Governor may call a special statewide election for the measure. [*As amended June 5, 1990.*]

[*Initiative and Referendum—Vote and Effective Date—Conflicts—Legislative Repeal or Amendment—Titling*]

SEC. 10. (a) An initiative statute or referendum approved by a majority of votes thereon takes effect the day after the election unless the

measure provides otherwise. If a referendum petition is filed against a part of a statute the remainder shall not be delayed from going into effect.

(b) If provisions of 2 or more measures approved at the same election conflict, those of the measure receiving the highest affirmative vote shall prevail.

(c) The Legislature may amend or repeal referendum statutes. It may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without their approval.

(d) Prior to circulation of an initiative or referendum petition for signatures, a copy shall be submitted to the Attorney General who shall prepare a title and summary of the measure as provided by law.

(e) The Legislature shall provide the manner in which petitions shall be circulated, presented, and certified, and measures submitted to the electors. [*Former Section 24 of Article IV, as renumbered June 8, 1976.*]

[*Initiative and Referendum—Cities or Counties*]

SEC. 11. (a) Initiative and referendum powers may be exercised by the electors of each city or county under procedures that the Legislature shall provide. Except as provided in subdivisions (b) and (c), this section does not affect a city having a charter.

(b) A city or county initiative measure may not include or exclude any part of the city or county from the application or effect of its provisions based upon approval or disapproval of the initiative measure, or based upon the casting of a specified percentage of votes in favor of the measure, by the electors of the city or county or any part thereof.

(c) A city or county initiative measure may not contain alternative or cumulative provisions wherein one or more of those provisions would become law depending upon the casting of a specified percentage of votes for or against the measure. [*As amended June 2, 1998.*]

[*Naming Individual or Private Corporation to Office or Duty Prohibited*]

SEC. 12. No amendment to the Constitution, and no statute proposed to the electors by the Legislature or by initiative, that names any individual to hold any office, or names or identifies any private corporation to perform any function or to have any power or duty, may be submitted to the electors or have any effect. [*Former Section 26 of Article IV, as renumbered June 8, 1976.*]

[*Recall Defined*]

SEC. 13. Recall is the power of the electors to remove an elective officer. [*New section adopted June 8, 1976.*]

[*Recall Petitions*]

SEC. 14. (a) Recall of a state officer is initiated by delivering to the Secretary of State a petition alleging reason for recall. Sufficiency of reason is not reviewable. Proponents have 160 days to file signed petitions.

(b) A petition to recall a statewide officer must be signed by electors equal in number to 12 percent of the last vote for the office, with signatures from each of 5 counties equal in number to 1 percent of the last vote for the office in the county. Signatures to recall Senators, members of the Assembly, members of the Board of Equalization, and judges of courts of appeal and trial courts must equal in number 20 percent of the last vote for the office.

(c) The Secretary of State shall maintain a continuous count of the signatures certified to that office. [*New section adopted June 8, 1976.*]

[*Recall Elections*]

SEC. 15. (a) An election to determine whether to recall an officer and, if appropriate, to elect a successor shall be called by the Governor and held not less than 60 days nor more than 80 days from the date of certification of sufficient signatures.

(b) A recall election may be conducted within 180 days from the date of certification of sufficient signatures in order that the election may be consolidated with the next regularly scheduled election occurring wholly or partially within the same jurisdiction in which the recall election is held, if the number of voters eligible to vote at that next regularly scheduled election equal at least 50 percent of all the voters eligible to vote at the recall election.

(c) If the majority vote on the question is to recall, the officer is removed and, if there is a candidate, the candidate who receives a plurality is the successor. The officer may not be a candidate, nor shall there be any candidacy for an office filled pursuant to subdivision (d) of Section 16 of Article VI. [*As amended November 8, 1994.*]

[*Legislature to Provide for Petitions, Etc.*]

SEC. 16. The Legislature shall provide for circulation, filing, and certification of petitions, nomination of candidates, and the recall election. [*New section adopted June 8, 1976.*]

[*Recall of Governor or Secretary of State*]

SEC. 17. If recall of the Governor or Secretary of State is initiated, the recall duties of that office shall be performed by the Lieutenant Governor or Controller, respectively. [*New section adopted June 8, 1976.*]

[*Reimbursement of Recall Election Expenses*]

SEC. 18. A state officer who is not recalled shall be reimbursed by the State for the officer's recall election expenses legally and personally in-

curred. Another recall may not be initiated against the officer until six months after the election. [*New section adopted June 8, 1976.*]

[*Recall of Local Officers*]

SEC. 19. The Legislature shall provide for recall of local officers. This section does not affect counties and cities whose charters provide for recall. [*New section adopted June 8, 1976.*]

[*Terms of Elective Offices*]

SEC. 20. Terms of elective offices provided for by this Constitution, other than Members of the Legislature, commence on the Monday after January 1 following election. The election shall be held in the last even-numbered year before the term expires. [*New section adopted June 8, 1976.*]

ARTICLE III. [*Repealed November 7, 1972. See Article III, below.*]

ARTICLE III*

STATE OF CALIFORNIA

[*United States Constitution Supreme Law*]

SEC. 1. The State of California is an inseparable part of the United States of America, and the United States Constitution is the supreme law of the land. [*New section adopted November 7, 1972.*]

[*Boundaries of the State—Sacramento Seat of Government*]

SEC. 2. The boundaries of the State are those stated in the Constitution of 1849 as modified pursuant to statute. Sacramento is the capital of California. [*New section adopted November 7, 1972.*]

[*Separation of Powers*]

SEC. 3. The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution. [*New section adopted November 7, 1972.*]

[*Administrative Agencies: Declaration Statute Unenforceable or Unconstitutional Prohibited*]

SEC. 3.5. An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:

(a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional;

* New Article III adopted November 7, 1972.

(b) To declare a statute unconstitutional;
(c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations. [*New section adopted June 6, 1978.*]

[*Salaries of Elected State Officers—Salaries of Judges*]

SEC. 4. (a) Except as provided in subdivision (b), salaries of elected state officers may not be reduced during their term of office. Laws that set these salaries are appropriations.

(b) Beginning on January 1, 1981, the base salary of a judge of a court of record shall equal the annual salary payable as of July 1, 1980, for that office had the judge been elected in 1978. The Legislature may prescribe increases in those salaries during a term of office, and it may terminate prospective increases in those salaries at any time during a term of office, but it shall not reduce the salary of a judge during a term of office below the highest level paid during that term of office. Laws setting the salaries of judges shall not constitute an obligation of contract pursuant to Section 9 of Article I or any other provision of law. [*As amended November 4, 1980.*]

[*Suits Against State*]

SEC. 5. Suits may be brought against the State in such manner and in such courts as shall be directed by law. [*New section adopted November 7, 1972.*]

[*Official State Language*]

SEC. 6. (a) Purpose.

English is the common language of the people of the United States of America and the State of California. This section is intended to preserve, protect and strengthen the English language, and not to supersede any of the rights guaranteed to the people by this Constitution.

(b) English as the Official Language of California.

English is the official language of the State of California.

(c) Enforcement.

The Legislature shall enforce this section by appropriate legislation. The Legislature and officials of the State of California shall take all steps necessary to insure that the role of English as the common language of the State of California is preserved and enhanced. The Legislature shall make no law which diminishes or ignores the role of English as the common language of the State of California.

(d) Personal Right of Action and Jurisdiction of Courts.

Any person who is a resident of or doing business in the State of California shall have standing to sue the State of California to enforce this section, and the Courts of record of the State of California shall have jurisdiction to hear cases brought to enforce this section. The Legislature may provide reasonable and appropriate limitations on the time and manner of suits brought under this section. [*New section adopted November 4, 1986. Initiative measure.*]

[*Retirement Benefits for Elected Constitutional Officers*]

SEC. 7. (a) The retirement allowance for any person, all of whose credited service in the Legislators' Retirement System was rendered or was deemed to have been rendered as an elective officer of the State whose office is provided for by the California Constitution, other than a judge and other than a Member of the Senate or Assembly, and all or any part of whose retirement allowance is calculated on the basis of the compensation payable to the officer holding the office which the member last held prior to retirement, or for the survivor or beneficiary of such a person, shall not be increased or affected in any manner by changes on or after November 5, 1986, in the compensation payable to the officer holding the office which the member last held prior to retirement.

(b) This section shall apply to any person, survivor, or beneficiary described in subdivision (a) who receives, or is receiving, from the Legislators' Retirement System a retirement allowance on or after November 5, 1986, all or any part of which allowance is calculated on the basis of the compensation payable to the officer holding the office which the member last held prior to retirement.

(c) It is the intent of the people, in adopting this section, to restrict retirement allowances to amounts reasonably to be expected by certain members and retired members of the Legislators' Retirement System and to preserve the basic character of earned retirement benefits while prohibiting windfalls and unforeseen advantages which have no relation to the real theory and objective of a sound retirement system. It is not the intent of this section to deny any member, retired member, survivor, or beneficiary a reasonable retirement allowance. Thus, this section shall not be construed as a repudiation of a debt nor the impairment of a contract for a substantial and reasonable retirement allowance from the Legislators' Retirement System.

(d) The people and the Legislature hereby find and declare that the dramatic increase in the retirement allowances of persons described in subdivision (a) which would otherwise result when the compensation for those offices increases on November 5, 1986, or January 5, 1987, are not benefits which could have reasonably been expected. The people and the Legislature further find and declare that the Legislature did not intend to

provide in its scheme of compensation for those offices such windfall benefits. [*New section adopted November 4, 1986.*]

[*California Citizens Compensation Commission*]

SEC. 8. (a) The California Citizens Compensation Commission is hereby created and shall consist of seven members appointed by the Governor. The commission shall establish the annual salary and the medical dental, insurance, and other similar benefits of state officers.

(b) The commission shall consist of the following persons:

(1) Three public members, one of whom has expertise in the area of compensation, such as an economist, market researcher, or personnel manager; one of whom is a member of a nonprofit public interest organization; and one of whom is representative of the general population and may include, among others, a retiree, homemaker, or person of median income. No person appointed pursuant to this paragraph may, during the 12 months prior to his or her appointment, have held public office, either elective or appointive, have been a candidate for elective public office, or have been a lobbyist, as defined by the Political Reform Act of 1974.

(2) Two members who have experience in the business community, one of whom is an executive of a corporation incorporated in this State which ranks among the largest private sector employers in the State based on the number of employees employed by the corporation in this State and one of whom is an owner of a small business in this State.

(3) Two members, each of whom is an officer or member of a labor organization.

(c) The Governor shall strive insofar as practicable to provide a balanced representation of the geographic, gender, racial, and ethnic diversity of the State in appointing commission members.

(d) The Governor shall appoint commission members and designate a chairperson for the commission not later than 30 days after the effective date of this section. The terms of two of the initial appointees shall expire on December 31, 1992, two on December 31, 1994, and three on December 31, 1996, as determined by the Governor. Thereafter, the term of each member shall be six years. Within 15 days of any vacancy, the Governor shall appoint a person to serve the unexpired portion of the term.

(e) No current or former officer or employee of this State is eligible for appointment to the commission.

(f) Public notice shall be given of all meetings of the commission, and the meetings shall be open to the public.

(g) On or before December 3, 1990, the commission shall, by a single resolution adopted by a majority of the membership of the commission, establish the annual salary and the medical, dental, insurance, and other similar benefits of state officers. The annual salary and benefits specified in that resolution shall be effective on and after December 3, 1990.

Thereafter, at or before the end of each of each fiscal year, the commission shall, by a single resolution adopted by a majority of the membership of the commission, adjust the annual salary and the medical, dental, insurance, and other similar benefits of state officers. The annual salary and benefits specified in the resolution shall be effective on and after the first Monday of the next December.

(h) In establishing or adjusting the annual salary and the medical, dental, insurance, and other similar benefits, the commission shall consider all of the following:

(1) The amount of time directly or indirectly related to the performance of the duties, functions, and services of a state officer.

(2) The amount of the annual salary and the medical, dental, insurance, and other similar benefits for other elected and appointed officers and officials in this State with comparable responsibilities, the judiciary, and, to the extent practicable, the private sector, recognizing, however, that state officers do not receive, and do not expect to receive, compensation at the same levels as individuals in the private sector with comparable experience and responsibilities.

(3) The responsibility and scope of authority of the entity in which the state officer serves.

(i) Until a resolution establishing or adjusting the annual salary and the medical, dental, insurance, and other similar benefits for state officers takes effect, each state officer shall continue to receive the same annual salary and the medical, dental, insurance, and other similar benefits received previously.

(j) All commission members shall receive their actual and necessary expenses, including travel expenses, incurred in the performance of their duties. Each member shall be compensated at the same rate as members, other than the chairperson, of the Fair Political Practices Commission, or its successor, for each day engaged in official duties, not to exceed 45 days per year.

(k) It is the intent of the Legislature that the creation of the commission should not generate new state costs for staff and services. The Department of Personnel Administration, the Board of Administration of the Public Employees' Retirement System, or other appropriate agencies, or their successors, shall furnish, from existing resources, staff and services to the commission as needed for the performance of its duties.

(*l*) "State officer," as used in this section, means the Governor, Lieutenant Governor, Attorney General, Controller, Insurance Commissioner, Secretary of State, Superintendent of Public Instruction, Treasurer, member of the State Board of Equalization, and Member of the Legislature. [*New section adopted June 5, 1990.*]

ARTICLE IV

LEGISLATIVE

[*Heading as amended November 8, 1966.*]

SECTION 1. [*Repealed November 8, 1966. See Section 1, below.*]

[*Legislative Power*]

SEC. 1. The legislative power of this State is vested in the California Legislature which consists of the Senate and Assembly, but the people reserve to themselves the powers of initiative and referendum. [*New section adopted November 8, 1966.*]

SEC. 1a. [*Renumbered Section 20 of Article XIII and amended November 8, 1966.*]

SEC. 1b. [*Repealed November 8, 1966.*]

SEC. 1c. [*Repealed November 8, 1966.*]

SEC. 1d. [*Repealed November 8, 1966.*]

[*Legislators—Limitation on Incumbency—Restriction of Retirement Benefits— Limitation of Staff and Support Services—Number of Terms*]

SEC. 1.5. The people find and declare that the Founding Fathers established a system of representative government based upon free, fair, and competitive elections. The increased concentration of political power in the hands of incumbent representatives has made our electoral system less free, less competitive, and less representative.

The ability of legislators to serve unlimited number of terms, to establish their own retirement system, and to pay for staff and support services at state expense contribute heavily to the extremely high number of incumbents who are reelected. These unfair incumbent advantages discourage qualified candidates from seeking public office and create a class of career politicians, instead of the citizen representatives envisioned by the Founding Fathers. These career politicians become representatives of the bureaucracy, rather than of the people whom they are elected to represent.

To restore a free and democratic system of fair elections, and to encourage qualified candidates to seek public office, the people find and declare that the powers of incumbency must be limited. Retirement benefits must be restricted, state-financed incumbent staff and support services limited, and limitations placed upon the number of terms which may be served. [*New section adopted November 6, 1990. Initiative measure.*]

[*Senate and Assembly—Membership—Elections—Number of Terms—Qualifications—Vacancies*]

SEC. 2. (a) The Senate has a membership of 40 Senators elected for 4-year terms, 20 to begin every 2 years. No Senator may serve more than 2 terms.

The Assembly has a membership of 80 members elected for 2-year terms. No member of the Assembly may serve more than 3 terms.

Their terms shall commence on the first Monday in December next following their election.

(b) Election of members of the Assembly shall be on the first Tuesday after the first Monday in November of even-numbered years unless otherwise prescribed by the Legislature. Senators shall be elected at the same time and places as members of the Assembly.

(c) A person is ineligible to be a member of the Legislature unless the person is an elector and has been a resident of the legislative district for one year, and a citizen of the United States and a resident of California for 3 years, immediately preceding the election.

(d) When a vacancy occurs in the Legislature the Governor immediately shall call an election to fill the vacancy. [*As amended November 6, 1990. Initiative measure.*]

[*Legislative Sessions—Regular and Special Sessions*]

SEC. 3. (a) The Legislature shall convene in regular session at noon on the first Monday in December of each even-numbered year and each house shall immediately organize. Each session of the Legislature shall adjourn sine die by operation of the Constitution at midnight on November 30 of the following even-numbered year.

(b) On extraordinary occasions the Governor by proclamation may cause the Legislature to assemble in special session. When so assembled it has power to legislate only on subjects specified in the proclamation but may provide for expenses and other matters incidental to the session. [*As amended June 8, 1976.*]

[*Legislators—Conflict of Interest—Prohibited Compensation—Earned Income*]

SEC. 4. (a) To eliminate any appearance of a conflict with the proper discharge of his or her duties and responsibilities, no Member of the Legislature may knowingly receive any salary, wages, commissions, or other similar earned income from a lobbyist or lobbying firm, as defined by the Political Reform Act of 1974, or from a person who, during the previous 12 months, has been under a contract with the Legislature. The Legislature shall enact laws that define earned income. However, earned income does not include any community property interest in the income of a spouse. Any Member who knowingly receives any salary, wages, commissions, or other similar earned income from a lobbyist employer, as defined by the

Political Reform Act of 1974, may not, for a period of one year following its receipt, vote upon or make, participate in making, or in any way attempt to use his or her official position to influence an action or decision before the Legislature, other than an action or decision involving a bill described in subdivision (c) of Section 12 of this article, which he or she knows, or has reason to know, would have a direct and significant financial impact on the lobbyist employer and would not impact the public generally or a significant segment of the public in a similar manner. As used in this subdivision, ''public generally'' includes an industry, trade, or profession.

[*Legislators—Travel and Living Expenses*]

(b) Travel and living expenses for Members of the Legislature in connection with their official duties shall be prescribed by statute passed by rollcall vote entered in the journal, two-thirds of the membership of each house concurring. A Member may not receive travel and living expenses during the times that the Legislature is in recess for more than three calendar days, unless the Member is traveling to or from, or is in attendance at, any meeting of a committee of which he or she is a member, or a meeting, conference, or other legislative function or responsibility as authorized by the rules of the house of which he or she is a member, which is held at a location at least 20 miles from his or her place of residence.

[*Legislators—Retirement*]

(c) The Legislature may not provide retirement benefits based on any portion of a monthly salary in excess of five hundred dollars ($500) paid to any Member of the Legislature unless the Member receives the greater amount while serving as a Member in the Legislature. The Legislature may, prior to their retirement, limit the retirement benefits payable to Members of the Legislature who serve during or after the term commencing in 1967.

When computing the retirement allowance of a Member who serves in the Legislature during the term commencing in 1967 or later, allowance may be made for increases in cost of living if so provided by statute, but only with respect to increases in the cost of living occurring after retirement of the Member. However, the Legislature may provide that no Member shall be deprived of a cost of living adjustment based on a monthly salary of five hundred dollars ($500) which has accrued prior to the commencement of the 1967 Regular Session of the Legislature. [*As amended June 5, 1990.*]

[*Legislators—Retirement*]

SEC. 4.5. Notwithstanding any other provision of this Constitution or existing law, a person elected to or serving in the Legislature on or after November 1, 1990, shall participate in the Federal Social Security (Retirement, Disability, Health Insurance) Program and the State shall pay

only the employer's share of the contribution necessary to such participation. No other pension or retirement benefit shall accrue as a result of service in the Legislature, such service not being intended as a career occupation. This Section shall not be construed to abrogate or diminish any vested pension or retirement benefit which may have accrued under an existing law to a person holding or having held office in the Legislature, but upon adoption of this Act no further entitlement to nor vesting in any existing program shall accrue to any such person, other than Social Security to the extent herein provided. [*New section adopted November 6, 1990. Initiative measure.*]

[*Legislators—Qualifications—Expulsion*]

SEC. 5. (a) Each house shall judge the qualifications and elections of its Members and, by rollcall vote entered in the journal, two thirds of the membership concurring, may expel a Member.

[*Legislators—Honoraria*]

(b) No Member of the Legislature may accept any honorarium. The Legislature shall enact laws that implement this subdivision.

[*Legislators—Gifts—Conflict of Interest*]

(c) The Legislature shall enact laws that ban or strictly limit the acceptance of a gift by a Member of the Legislature from any source if the acceptance of the gift might create a conflict of interest.

[*Legislators—Prohibited Compensation or Activity*]

(d) No Member of the Legislature may knowingly accept any compensation for appearing, agreeing to appear, or taking any other action on behalf of another person before any state government board or agency. If a Member knowingly accepts any compensation for appearing, agreeing to appear, or taking any other action on behalf of another person before any local government board or agency, the Member may not, for a period of one year following the acceptance of the compensation, vote upon or make, participate in making, or in any way attempt to use his or her official position to influence an action or decision before the Legislature, other than an action or decision involving a bill described in subdivision (c) of Section 12 of this article, which he or she knows, or has reason to know, would have a direct and significant financial impact on that person and would not impact the public generally or a significant segment of the public in a similar manner. As used in this subdivision, ''public generally'' includes an industry, trade, or profession. However, a Member may engage in activities involving a board or agency which are strictly on his or her own behalf, appear in the capacity of an attorney before any court or the Workers' Compensation Appeals Board, or act as an advocate without compensation or make an inquiry for information on behalf of a person be-

fore a board or agency. This subdivision does not prohibit any action of a partnership or firm of which the Member is a member if the Member does not share directly or indirectly in the fee, less any expenses attributable to that fee, resulting from that action.

[*Legislators—Lobbying*]

(e) The Legislature shall enact laws that prohibit a Member of the Legislature whose term of office commences on or after December 3, 1990, from lobbying, for compensation, as governed by the Political Reform Act of 1974, before the Legislature for 12 months after leaving office.

[*Legislators—Conflict of Interest*]

(f) The Legislature shall enact new laws, and strengthen the enforcement of existing laws, prohibiting Members of the Legislature from engaging in activities or having interests which conflict with the proper discharge of their duties and responsibilities. However, the people reserve to themselves the power to implement this requirement pursuant to Article II. [*As amended June 5, 1990. Subdivision (b) operative December 3, 1990.*]

SEC. 6. [*Repealed June 3, 1980. See Section 6, below.*]

[*Senatorial and Assembly Districts*]

SEC. 6. For the purpose of choosing members of the Legislature, the State shall be divided into 40 Senatorial and 80 Assembly districts to be called Senatorial and Assembly Districts. Each Senatorial district shall choose one Senator and each Assembly district shall choose one member of the Assembly. [*New section adopted June 3, 1980.*]

[*House Rules—Officers—Quorum*]

SEC. 7. (a) Each house shall choose its officers and adopt rules for its proceedings. A majority of the membership constitutes a quorum, but a smaller number may recess from day to day and compel the attendance of absent members.

[*Journals*]

(b) Each house shall keep and publish a journal of its proceedings. The rollcall vote of the members on a question shall be taken and entered in the journal at the request of 3 members present.

[*Public Proceedings—Closed Sessions*]

(c) (1) The proceedings of each house and the committees thereof shall be open and public. However, closed sessions may be held solely for any of the following purposes:

(A) To consider the appointment, employment, evaluation of performance, or dismissal of a public officer or employee, to consider or hear complaints or charges brought against a Member of the Legislature or

other public officer or employee, or to establish the classification or compensation of an employee of the Legislature.

(B) To consider matters affecting the safety and security of Members of the Legislature or its employees or the safety and security of any buildings and grounds used by the Legislature.

(C) To confer with, or receive advice from, its legal counsel regarding pending or reasonably anticipated, or whether to initiate, litigation when discussion in open session would not protect the interests of the house or committee regarding the litigation.

(2) A caucus of the Members of the Senate, the Members of the Assembly, or the Members of both houses, which is composed of the members of the same political party, may meet in closed session.

(3) The Legislature shall implement this subdivision by concurrent resolution adopted by rollcall vote entered in the journal, two-thirds of the membership of each house concurring, or by statute, and shall prescribe that, when a closed session is held pursuant to paragraph (1), reasonable notice of the closed session and the purpose of the closed session shall be provided to the public. If there is a conflict between a concurrent resolution and statute, the last adopted or enacted shall prevail.

[*Recess*]

(d) Neither house without the consent of the other may recess for more than 10 days or to any other place. [*As amended June 5, 1990. Subdivision (c) operative December 3, 1990.*]

[*Legislature—Total Aggregate Expenditures*]

SEC. 7.5. In the fiscal year immediately following the adoption of this Act, the total aggregate expenditures of the Legislature for the compensation of members and employees of, and the operating expenses and equipment for, the Legislature may not exceed an amount equal to nine hundred fifty thousand dollars ($950,000) per member for that fiscal year or 80 percent of the amount of money expended for those purposes in the preceding fiscal year, whichever is less. For each fiscal year thereafter, the total aggregate expenditures may not exceed an amount equal to that expended for those purposes in the preceding fiscal year, adjusted and compounded by an amount equal to the percentage increase in the appropriations limit for the State established pursuant to Article XIII B. [*New section adopted November 6, 1990. Initiative measure.*]

[*Bills and Statutes—30-day Waiting Period*]

SEC. 8. (a) At regular sessions no bill other than the budget bill may be heard or acted on by committee or either house until the 31st day after the bill is introduced unless the house dispenses with this requirement by rollcall vote entered in the journal, three fourths of the membership concurring.

[*Bills and Statutes—3 Readings*]

(b) The Legislature may make no law except by statute and may enact no statute except by bill. No bill may be passed unless it is read by title on 3 days in each house except that the house may dispense with this requirement by rollcall vote entered in the journal, two thirds of the membership concurring. No bill may be passed until the bill with amendments has been printed and distributed to the members. No bill may be passed unless, by rollcall vote entered in the journal, a majority of the membership of each house concurs.

[*Bills and Statutes—Effective Date*]

(c) (1) Except as provided in paragraphs (2) and (3) of this subdivision, a statute enacted at a regular session shall go into effect on January 1 next following a 90-day period from the date of enactment of the statute and a statute enacted at a special session shall go into effect on the 91st day after adjournment of the special session at which the bill was passed.

(2) A statute, other than a statute establishing or changing boundaries of any legislative, congressional, or other election district, enacted by a bill passed by the Legislature on or before the date the Legislature adjourns for a joint recess to reconvene in the second calendar year of the biennium of the legislative session, and in the possession of the Governor after that date, shall go into effect on January 1 next following the enactment date of the statute unless, before January 1, a copy of a referendum petition affecting the statute is submitted to the Attorney General pursuant to subdivision (d) of Section 10 of Article II, in which event the statute shall go into effect on the 91st day after the enactment date unless the petition has been presented to the Secretary of State pursuant to subdivision (b) of Section 9 of Article II.

(3) Statutes calling elections, statutes providing for tax levies or appropriations for the usual current expenses of the State, and urgency statutes shall go into effect immediately upon their enactment.

[*Bills and Statutes—Urgency Statutes*]

(d) Urgency statutes are those necessary for immediate preservation of the public peace, health, or safety. A statement of facts constituting the necessity shall be set forth in one section of the bill. In each house the section and the bill shall be passed separately, each by rollcall vote entered in the journal, two thirds of the membership concurring. An urgency statute may not create or abolish any office or change the salary, term, or duties of any office, or grant any franchise or special privilege, or create any vested right or interest. [*As amended June 5, 1990.*]

[*Ballot Measures—Application*]

SEC. 8.5. An act amending an initiative statute, an act providing for the issuance of bonds, or a constitutional amendment proposed by the Legislature and submitted to the voters for approval may not do either of the following:

(a) Include or exclude any political subdivision of the State from the application or effect of its provisions based upon approval or disapproval of the measure, or based upon the casting of a specified percentage of votes in favor of the measure, by the electors of that political subdivision.

(b) Contain alternative or cumulative provisions wherein one or more of those provisions would become law depending upon the casting of a specified percentage of votes for or against the measure. [*New section adopted June 2, 1998.*]

SEC. 9. [*Repealed November 8, 1966. See Section 9, below.*]

[*Statutes—Title—Section*]

SEC. 9. A statute shall embrace but one subject, which shall be expressed in its title. If a statute embraces a subject not expressed in its title, only the part not expressed is void. A statute may not be amended by reference to its title. A section of a statute may not be amended unless the section is re-enacted as amended. [*New section adopted November 8, 1966.*]

[*Governor's Veto—Bill Introduction in Biennial Session*]

SEC. 10. (a) Each bill passed by the Legislature shall be presented to the Governor. It becomes a statute if it is signed by the Governor. The Governor may veto it by returning it with any objections to the house of origin, which shall enter the objections in the journal and proceed to reconsider it. If each house then passes the bill by rollcall vote entered in the journal, two thirds of the membership concurring, it becomes a statute.

(b) (1) Any bill, other than a bill which would establish or change boundaries of any legislative, congressional, or other election district, passed by the Legislature on or before the date the Legislature adjourns for a joint recess to reconvene in the second calendar year of the biennium of the legislative session, and in the possession of the Governor after that date, that is not returned within 30 days after that date becomes a statute.

(2) Any bill passed by the Legislature before September 1 of the second calendar year of the biennium of the legislative session and in the possession of the Governor on or after September 1 that is not returned on or before September 30 of that year becomes a statute.

(3) Any other bill presented to the Governor that is not returned within 12 days becomes a statute.

(4) If the Legislature by adjournment of a special session prevents the return of a bill with the veto message, the bill becomes a statute unless the

Governor vetoes the bill within 12 days after it is presented by depositing it and the veto message in the office of the Secretary of State.

(5) If the 12th day of the period within which the Governor is required to perform an act pursuant to paragraph (3) or (4) of this subdivision is a Saturday, Sunday, or holiday, the period is extended to the next day that is not a Saturday, Sunday, or holiday.

(c) Any bill introduced during the first year of the biennium of the legislative session that has not been passed by the house of origin by January 31 of the second calendar year of the biennium may no longer be acted on by the house. No bill may be passed by either house on or after September 1 of an even-numbered year except statutes calling elections, statutes providing for tax levies or appropriations for the usual current expenses of the State, and urgency statutes, and bills passed after being vetoed by the Governor.

(d) The Legislature may not present any bill to the Governor after November 15 of the second calendar year of the biennium of the legislative session.

(e) The Governor may reduce or eliminate one or more items of appropriation while approving other portions of a bill. The Governor shall append to the bill a statement of the items reduced or eliminated with the reasons for the action. The Governor shall transmit to the house originating the bill a copy of the statement and reasons. Items reduced or eliminated shall be separately reconsidered and may be passed over the Governor's veto in the same manner as bills. [*As amended June 5, 1990.*]

[*Committees*]

SEC. 11. The Legislature or either house may by resolution provide for the selection of committees necessary for the conduct of its business, including committees to ascertain facts and make recommendations to the Legislature on a subject within the scope of legislative control. [*As amended November 7, 1972.*]

[*Governor's Budget—Budget Bill—Other Appropriations*]

SEC. 12. (a) Within the first 10 days of each calendar year, the Governor shall submit to the Legislature, with an explanatory message, a budget for the ensuing fiscal year containing itemized statements for recommended state expenditures and estimated state revenues. If recommended expenditures exceed estimated revenues, the Governor shall recommend the sources from which the additional revenues should be provided.

(b) The Governor and the Governor-elect may require a state agency, officer or employee to furnish whatever information is deemed necessary to prepare the budget.

(c) The budget shall be accompanied by a budget bill itemizing recommended expenditures. The bill shall be introduced immediately in each

house by the persons chairing the committees that consider appropriations. The Legislature shall pass the budget bill by midnight on June 15 of each year. Until the budget bill has been enacted, the Legislature shall not send to the Governor for consideration any bill appropriating funds for expenditure during the fiscal year for which the budget bill is to be enacted, except emergency bills recommended by the Governor or appropriations for the salaries and expenses of the Legislature.

(d) No bill except the budget bill may contain more than one item of appropriation, and that for one certain, expressed purpose. Appropriations from the General Fund of the State, except appropriations for the public schools, are void unless passed in each house by rollcall vote entered in the journal, two thirds of the membership concurring.

(e) The Legislature may control the submission, approval, and enforcement of budgets and the filing of claims for all state agencies. [*As amended June 4, 1974, and November 5, 1974.*]

[*Legislators—Ineligible for Certain Offices*]

SEC. 13. A member of the Legislature may not, during the term for which the member is elected, hold any office or employment under the State other than an elective office. [*As amended November 5, 1974.*]

SEC. 14. [*Repealed November 8, 1966. See Section 14, below.*]

[*Members—Not Subject to Civil Process*]

SEC. 14. A member of the Legislature is not subject to civil process during a session of the Legislature or for 5 days before and after a session. [*New section adopted November 8, 1966.*]

[*Influencing Action or Vote of a Member—Felony*]

SEC. 15. A person who seeks to influence the vote or action of a member of the Legislature in the member's legislative capacity by bribery, promise of reward, intimidation, or other dishonest means, or a member of the Legislature so influenced, is guilty of a felony. [*As amended November 5, 1974.*]

[*Uniform Operation of General Laws—Special Statute—Invalid*]

SEC. 16. (a) All laws of a general nature have uniform operation.

(b) A local or special statute is invalid in any case if a general statute can be made applicable. [*As amended November 5, 1974.*]

SEC. 17. [*Repealed November 8, 1966. See Section 17, below.*]

[*Grant of Extra Compensation or Allowance Prohibited*]

SEC. 17. The Legislature has no power to grant, or to authorize a city, county, or other public body to grant, extra compensation or extra allowance to a public officer, public employee, or contractor after service has

been rendered or a contract has been entered into and performed in whole or in part, or to authorize the payment of a claim against the State or a city, county, or other public body under an agreement made without authority of law. [*New section adopted November 8, 1966.*]

SEC. 18. [*Repealed November 8, 1966. See Section 18, below.*]

[*Impeachment*]

SEC. 18. (a) The Assembly has the sole power of impeachment. Impeachments shall be tried by the Senate. A person may not be convicted unless, by rollcall vote entered in the journal, two thirds of the membership of the Senate concurs.

(b) State officers elected on a statewide basis, members of the State Board of Equalization, and judges of state courts are subject to impeachment for misconduct in office. Judgment may extend only to removal from office and disqualification to hold any office under the State, but the person convicted or acquitted remains subject to criminal punishment according to law. [*New section adopted November 8, 1966.*]

[*Lotteries—Horse Races Regulated—Bingo Games for Charitable Purposes*]

SEC. 19. (a) The Legislature has no power to authorize lotteries and shall prohibit the sale of lottery tickets in the State.

(b) The Legislature may provide for the regulation of horse races and horse race meetings and wagering on the results.

(c) Notwithstanding subdivision (a) the Legislature by statute may authorize cities and counties to provide for bingo games, but only for charitable purposes.

(d) Notwithstanding subdivision (a), there is authorized the establishment of a California State Lottery.

(e) The Legislature has no power to authorize, and shall prohibit casinos of the type currently operating in Nevada and New Jersey. [*As amended November 6, 1984. Initiative measure.*]

SEC. 20. [*Repealed November 8, 1966. See Section 20, below.*]

[*Fish and Game—Districts and Commission*]

SEC. 20. (a) The Legislature may provide for division of the State into fish and game districts and may protect fish and game in districts or parts of districts.

(b) There is a Fish and Game Commission of 5 members appointed by the Governor and approved by the Senate, a majority of the membership concurring, for 6-year terms and until their successors are appointed and qualified. Appointment to fill a vacancy is for the unexpired portion of the term. The Legislature may delegate to the commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. A member of the commission may be removed by concurrent reso-

lution adopted by each house, a majority of the membership concurring. [*New section adopted November 8, 1966.*]

[*War- or Enemy-Caused Disaster*]

SEC. 21. To meet the needs resulting from war-caused or enemy-caused disaster in California, the Legislature may provide for:

(a) Filling the offices of members of the Legislature should at least one fifth of the membership of either house be killed, missing, or disabled, until they are able to perform their duties or successors are elected.

(b) Filling the office of Governor should the Governor be killed, missing, or disabled, until the Governor or the successor designated in this Constitution is able to perform the duties of the office of Governor or a successor is elected.

(c) Convening the Legislature.

(d) Holding elections to fill offices that are elective under this Constitution and that are either vacant or occupied by persons not elected thereto.

(e) Selecting a temporary seat of state or county government. [*As amended November 5, 1974.*]

[*Accountability—Session Goals and Objectives*]

SEC. 22. It is the right of the people to hold their legislators accountable. To assist the people in exercising this right, at the convening of each regular session of the Legislature, the President pro Tempore of the Senate, the Speaker of the Assembly, and the minority leader of each house shall report to their house the goals and objectives of that house during that session and, at the close of each regular session, the progress made toward meeting those goals and objectives. [*New section adopted June 5, 1990.*]

SEC. 22a. [*Repealed November 8, 1966.*]

SEC. 23. [*Renumbered Section 9 of Article II June 8, 1976.*]

SEC. 23a. [*Repealed November 8, 1966.*]

SEC. 23b. [*Repealed November 8, 1966.*]

SEC. 24. [*Renumbered Section 10 of Article II June 8, 1976.*]

SEC. 25. [*Renumbered Section 11 of Article II June 8, 1976.*]

SEC. 25a. [*Repealed November 8, 1966.*]

SEC. 25½. [*Repealed November 8, 1966.*]

SEC. 25⅝. [*Renumbered Section 22 of Article XIII and amended November 8, 1966.*]

SEC. 25¾. [*Renumbered Section 25.7 and amended November 6, 1962.*]

SEC. 25.7. [*Repealed November 8, 1966.*]

SEC. 26. [*Renumbered Section 12 of Article II June 8, 1976.*]

SEC. 27. [*Repealed June 3, 1980.*]

[*State Capitol Maintenance—Appropriations*]

SEC. 28. (a) Notwithstanding any other provision of this Constitution, no bill shall take effect as an urgency statute if it authorizes or contains an appropriation for either (1) the alteration or modification of the color, detail, design, structure or fixtures of the historically restored areas of the first, second, and third floors and the exterior of the west wing of the State Capitol from that existing upon the completion of the project of restoration or rehabilitation of the building conducted pursuant to Section 9124 of the Government Code as such section read upon the effective date of this section, or (2) the purchase of furniture of different design to replace that restored, replicated, or designed to conform to the historic period of the historically restored areas specified above, including the legislators' chairs and desks in the Senate and Assembly Chambers.

(b) No expenditures shall be made in payment for any of the purposes described in subdivision (a) of this section unless funds are appropriated expressly for such purposes.

(c) This section shall not apply to appropriations or expenditures for ordinary repair and maintenance of the State Capitol building, fixtures and furniture. [*New Section adopted June 3, 1980.*]

SEC. 29. [*Renumbered Section 23 of Article XIII and amended November 8, 1966.*]

SEC. 30. [*Renumbered Section 24 of Article XIII and amended November 8, 1966.*]

SEC. 31. [*Renumbered Section 25 of Article XIII and amended November 8, 1966.*]

SEC. 31a. [*Renumbered Section 26 of Article XIII and amended November 8, 1966.*]

SEC. 31b. [*As adopted by Assembly Constitutional Amendment 14 of 1931, repealed November 6, 1956.*]

SEC. 31b. [*As adopted November 8, 1932, renumbered Section 27 of Article XIII and amended November 8, 1966.*]

SEC. 31c. [*As adopted November 3, 1936, renumbered Section 28 of Article XIII and amended November 8, 1966.*]

SEC. 31c. [*As adopted November 3, 1942, repealed November 6, 1956.*]

SEC. 31d. [*Repealed November 6, 1956.*]

SEC. 32. [*Repealed November 8, 1966.*]

SEC. 33. [*Repealed November 8, 1966.*]

SEC. 34. [*Repealed November 8, 1966.*]

SEC. 34a. [*Repealed November 8, 1966.*]

SEC. 35. [*Repealed November 8, 1966.*]

SEC. 36. [*Repealed November 8, 1966.*]

SEC. 37. [*Repealed November 8, 1966.*]

SEC. 38. [*Repealed November 8, 1966.*]

ARTICLE V. [*Repealed November 8, 1966. See Article V, below.*]

ARTICLE V*

EXECUTIVE

[*Executive Power Vested in Governor*]

SECTION 1. The supreme executive power of this State is vested in the Governor. The Governor shall see that the law is faithfully executed. [*As amended November 5, 1974.*]

[*Election—Eligibility—Number of Terms*]

SEC. 2. The Governor shall be elected every fourth year at the same time and places as members of the Assembly and hold office from the Monday after January 1 following the election until a successor qualifies. The Governor shall be an elector who has been a citizen of the United States and a resident of this State for 5 years immediately preceding the Governor's election. The Governor may not hold other public office. No Governor may serve more than 2 terms. [*As amended November 6, 1990. Initiative measure.*]

[*Report to Legislature—Recommendations*]

SEC. 3. The Governor shall report to the Legislature each calendar year on the condition of the State and may make recommendations. [*As amended November 7, 1972.*]

SEC. 4. [*Repealed November 8, 1966. See Section 4, below.*]

[*Information From Executive Officers, Etc.*]

SEC. 4. The Governor may require executive officers and agencies and their employees to furnish information relating to their duties. [*New section adopted November 8, 1966.*]

[*Filling Vacancies—Confirmation by Legislature*]

SEC. 5. (a) Unless the law otherwise provides, the Governor may fill a vacancy in office by appointment until a successor qualifies.

(b) Whenever there is a vacancy in the office of the Superintendent of Public Instruction, the Lieutenant Governor, Secretary of State, Controller, Treasurer, or Attorney General, or on the State Board of Equalization, the

* New Article V adopted November 8, 1966.

Governor shall nominate a person to fill the vacancy who shall take office upon confirmation by a majority of the membership of the Senate and a majority of the membership of the Assembly and who shall hold office for the balance of the unexpired term. In the event the nominee is neither confirmed nor refused confirmation by both the Senate and the Assembly within 90 days of the submission of the nomination, the nominee shall take office as if he or she had been confirmed by a majority of the Senate and Assembly; provided, that if such 90-day period ends during a recess of the Legislature, the period shall be extended until the sixth day following the day on which the Legislature reconvenes. [*As amended November 2, 1976.*]

SEC. 6. [*Repealed November 8, 1966. See Section 6, below.*]

[*Executive Assignment and Agency Reorganization*]

SEC. 6. Authority may be provided by statute for the Governor to assign and reorganize functions among executive officers and agencies and their employees, other than elective officers and agencies administered by elective officers. [*New section adopted November 8, 1966.*]

[*Commander of Militia*]

SEC. 7. The Governor is commander in chief of a militia that shall be provided by statute. The Governor may call it forth to execute the law. [*As amended November 5, 1974.*]

[*Reprieves—Pardons—Commutations*]

SEC. 8. (a) Subject to application procedures provided by statute, the Governor, on conditions the Governor deems proper, may grant a reprieve, pardon, and commutation, after sentence, except in case of impeachment. The Governor shall report to the Legislature each reprieve, pardon, and commutation granted, stating the pertinent facts and the reasons for granting it. The Governor may not grant a pardon or commutation to a person twice convicted of a felony except on recommendation of the Supreme Court, 4 judges concurring.

(b) No decision of the parole authority of this State with respect to the granting, denial, revocation, or suspension of parole of a person sentenced to an indeterminate term upon conviction of murder shall become effective for a period of 30 days, during which the Governor may review the decision subject to procedures provided by statute. The Governor may only affirm, modify, or reverse the decision of the parole authority on the basis of the same factors which the parole authority is required to consider. The Governor shall report to the Legislature each parole decision affirmed, modified, or reversed, stating the pertinent facts and reasons for the action. [*As amended November 8, 1988.*]

[*Lieutenant Governor—Qualifications—Casting Vote*]

SEC. 9. The Lieutenant Governor shall have the same qualifications as the Governor. The Lieutenant Governor is President of the Senate but has only a casting vote. [*As amended November 5, 1974.*]

[*Succession*]

SEC. 10. The Lieutenant Governor shall become Governor when a vacancy occurs in the office of Governor.

The Lieutenant Governor shall act as Governor during the impeachment, absence from the State, or other temporary disability of the Governor or of a Governor-elect who fails to take office.

The Legislature shall provide an order of precedence after the Lieutenant Governor for succession to the office of Governor and for the temporary exercise of the Governor's functions.

The Supreme Court has exclusive jurisdiction to determine all questions arising under this section.

Standing to raise questions of vacancy or temporary disability is vested exclusively in a body provided by statute. [*As amended November 5, 1974.*]

[*Other State Officers—Election—Number of Terms*]

SEC. 11. The Lieutenant Governor, Attorney General, Controller, Secretary of State, and Treasurer shall be elected at the same time and places and for the same term as the Governor. No Lieutenant Governor, Attorney General, Controller, Secretary of State, or Treasurer may serve in the same office for more than 2 terms. [*As amended November 6, 1990. Initiative measure.*]

SEC. 12. [*Repealed June 5, 1990.*]

[*Attorney General—Chief Law Officer*]

SEC. 13. Subject to the powers and duties of the Governor, the Attorney General shall be the chief law officer of the State. It shall be the duty of the Attorney General to see that the laws of the State are uniformly and adequately enforced. The Attorney General shall have direct supervision over every district attorney and sheriff and over such other law enforcement officers as may be designated by law, in all matters pertaining to the duties of their respective offices, and may require any of said officers to make reports concerning the investigation, detection, prosecution, and punishment of crime in their respective jurisdictions as to the Attorney General may seem advisable. Whenever in the opinion of the Attorney General any law of the State is not being adequately enforced in any county, it shall be the duty of the Attorney General to prosecute any violations of law of which the superior court shall have jurisdiction, and in such cases the Attorney General shall have all the powers of a district at-

torney. When required by the public interest or directed by the Governor, the Attorney General shall assist any district attorney in the discharge of the duties of that office. [*As amended November 5, 1974.*]

[*State Officers—Conflict of Interest—Prohibited Compensation—Earned Income*]

SEC. 14. (a) To eliminate any appearance of a conflict with the proper discharge of his or her duties and responsibilities, no state officer may knowingly receive any salary, wages, commissions, or other similar earned income from a lobbyist or lobbying firm, as defined by the Political Reform Act of 1974, or from a person who, during the previous 12 months, has been under a contract with the state agency under the jurisdiction of the state officer. The Legislature shall enact laws that define earned income. However, earned income does not include any community property interest in the income of a spouse. Any state officer who knowingly receives any salary, wages, commissions, or other similar earned income from a lobbyist employer, as defined by the Political Reform Act of 1974, may not, for a period of one year following its receipt, vote upon or make, participate in making, or in any way attempt to use his or her official position to influence an action or decision before the agency for which the state officer serves, other than an action or decision involving a bill described in subdivision (c) of Section 12 of Article IV, which he or she knows, or has reason to know, would have a direct and significant financial impact on the lobbyist employer and would not impact the public generally or a significant segment of the public in a similar manner. As used in this subdivision, ''public generally'' includes an industry, trade, or profession.

[*State Officers—Honoraria*]

(b) No state officer may accept any honorarium. The Legislature shall enact laws that implement this subdivision.

[*State Officers—Gifts—Conflict of Interest*]

(c) The Legislature shall enact laws that ban or strictly limit the acceptance of a gift by a state officer from any source if the acceptance of the gift might create a conflict of interest.

[*State Officers—Prohibited Compensation or Activity*]

(d) No state officer may knowingly accept any compensation for appearing, agreeing to appear, or taking any other action on behalf of another person before any state government board or agency. If a state officer knowingly accepts any compensation for appearing, agreeing to appear, or taking any other action on behalf of another person before any local government board or agency, the state officer may not, for a period of one year following the acceptance of the compensation, make, participate in making, or in any way attempt to use his or her official position to influence an

action or decision before the state agency for which the state officer serves, other than an action or decision involving a bill described in subdivision (c) of Section 12 of Article IV, which he or she knows, or has reason to know, would have a direct and significant financial impact on that person and would not impact the public generally or a significant segment of the public in a similar manner. As used in this subdivision, ''public generally'' includes an industry, trade, or profession. However, a state officer may engage in activities involving a board or agency which are strictly on his or her own behalf, appear in the capacity of an attorney before any court or the Workers' Compensation Appeals Board, or act as an advocate without compensation or make an inquiry for information on behalf of a person before a board or agency. This subdivision does not prohibit any action of a partnership or firm of which the state officer is a member if the state officer does not share directly or indirectly in the fee, less any expenses attributable to that fee, resulting from that action.

[*State Officers—Lobbying*]

(e) The Legislature shall enact laws that prohibit a state officer, or a secretary of an agency or director of a department appointed by the Governor, who has not resigned or retired from state service prior to January 7, 1991, from lobbying, for compensation, as governed by the Political Reform Act of 1974, before the executive branch of state government for 12 months after leaving office.

[*State Officer—Definition*]

(f) ''State officer,'' as used in this section, means the Governor, Lieutenant Governor, Attorney General, Controller, Insurance Commissioner, Secretary of State, Superintendent of Public Instruction, Treasurer, and member of the State Board of Equalization. [*New section adopted June 5, 1990. Subdivision (b) operative December 3, 1990.*]

SEC. 15. [*Repealed November 8, 1966.*]

SEC. 16. [*Repealed November 8, 1966.*]

SEC. 17. [*Repealed November 8, 1966.*]

SEC. 18. [*Repealed November 8, 1966.*]

SEC. 20. [*Repealed November 8, 1966.*]

SEC. 21. [*Repealed November 8, 1966.*]

SEC. 22. [*Repealed November 8, 1966.*]

ARTICLE VI. [*Repealed November 8, 1966. See Article VI, below.*]

ARTICLE VI*

JUDICIAL

[*Judicial Power Vested in Courts*]

SEC. 1. The judicial power of this State is vested in the Supreme Court, courts of appeal, superior courts, and municipal courts, all of which are courts of record. [*As amended June 2, 1998.*]

SEC. 1a. [*Repealed November 8, 1966.*]

SEC. 1b. [*Repealed November 8, 1966.*]

SEC. 1c. [*Repealed November 8, 1966.*]

[*Supreme Court—Composition*]

SEC. 2. The Supreme Court consists of the Chief Justice of California and 6 associate justices. The Chief Justice may convene the court at any time. Concurrence of 4 judges present at the argument is necessary for a judgment.

An acting Chief Justice shall perform all functions of the Chief Justice when the Chief Justice is absent or unable to act. The Chief Justice or, if the Chief Justice fails to do so, the court shall select an associate justice as acting Chief Justice. [*As amended November 5, 1974.*]

[*Judicial Districts—Courts of Appeal*]

SEC. 3. The Legislature shall divide the State into districts each containing a court of appeal with one or more divisions. Each division consists of a presiding justice and 2 or more associate justices. It has the power of a court of appeal and shall conduct itself as a 3-judge court. Concurrence of 2 judges present at the argument is necessary for a judgment.

An acting presiding justice shall perform all functions of the presiding justice when the presiding justice is absent or unable to act. The presiding justice or, if the presiding justice fails to do so, the Chief Justice shall select an associate justice of that division as acting presiding justice. [*As amended November 5, 1974.*]

[*Superior Courts*]

SEC. 4. In each county there is a superior court of one or more judges. The Legislature shall prescribe the number of judges and provide for the officers and employees of each superior court. If the governing body of each affected county concurs, the Legislature may provide that one or more judges serve more than one superior court.

* New Article VI adopted November 8, 1966.

In each superior court there is an appellate division. The Chief Justice shall assign judges to the appellate division for specified terms pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to promote the independence of the appellate division. [*As amended June 2, 1998.*]

SEC. 4a. [*Repealed November 8, 1966.*]

SEC. 4b. [*Repealed November 8, 1966.*]

SEC. 4c. [*Repealed November 8, 1966.*]

SEC. 4d. [*Repealed November 8, 1966.*]

SEC. 4e. [*Repealed November 8, 1966.*]

SEC. 4½. [*Repealed November 8, 1966.*]

SEC. 4¾. [*Repealed November 8, 1966.*]

[*Municipal, Superior, and Justice Courts*]

SEC. 5. (a) Each county shall be divided into municipal court districts as provided by statute, but a city may not be divided into more than one district. Each municipal court shall have one or more judges. Each municipal court district shall have no fewer than 40,000 residents; provided that each county shall have at least one municipal court district. The number of residents shall be determined as provided by statute.

(b) On the operative date of this subdivision, all existing justice courts shall become municipal courts, and the number, qualifications, and compensation of judges, officers, attachés, and employees shall continue until changed by the Legislature. Each judge of a part-time municipal court is deemed to have agreed to serve full time and shall be available for assignment by the Chief Justice for the balance of time necessary to comprise a full-time workload.

(c) The Legislature shall provide for the organization and prescribe the jurisdiction of municipal courts. It shall prescribe for each municipal court the number, qualifications, and compensation of judges, officers, and employees.

(d) Notwithstanding subdivision (a), any city in San Diego County may be divided into more than one municipal court district if the Legislature determines that unusual geographic conditions warrant such division.

(e) Notwithstanding subdivision (a), the municipal and superior courts shall be unified upon a majority vote of superior court judges and a majority vote of municipal court judges within the county. In those counties, there shall be only a superior court. [*As amended June 2, 1998.*]

SEC. 5.5. [*Repealed June 8, 1976.*]

[*Judicial Council—Membership and Powers*]

SEC. 6. The Judicial Council consists of the Chief Justice and one other judge of the Supreme Court, 3 judges of courts of appeal, 5 judges

of superior courts, 5 judges of municipal courts, 2 nonvoting court administrators, and such other nonvoting members as determined by the voting membership of the council, each appointed by the Chief Justice for a 3-year term pursuant to procedures established by the council; 4 members of the State Bar appointed by its governing body for 3-year terms; and one member of each house of the Legislature appointed as provided by the house. Vacancies in the memberships on the Judicial Council otherwise designated for municipal court judges shall be filled by judges of the superior court in the case of appointments made when fewer than 10 counties have municipal courts.

Council membership terminates if a member ceases to hold the position that qualified the member for appointment. A vacancy shall be filled by the appointing power for the remainder of the term.

The council may appoint an Administrative Director of the Courts, who serves at its pleasure and performs functions delegated by the council or the Chief Justice, other than adopting rules of court administration, practice and procedure.

To improve the administration of justice the council shall survey judicial business and make recommendations to the courts, make recommendations annually to the Governor and Legislature, adopt rules for court administration, practice and procedure, and perform other functions prescribed by statute. The rules adopted shall not be inconsistent with statute.

The Chief Justice shall seek to expedite judicial business and to equalize the work of judges. The Chief Justice may provide for the assignment of any judge to another court but only with the judge's consent if the court is of lower jurisdiction. A retired judge who consents may be assigned to any court.

Judges shall report to the council as the Chief Justice directs concerning the condition of judicial business in their courts. They shall cooperate with the council and hold court as assigned. [*As amended June 2, 1998.*]

SEC. 7. [*Repealed November 8, 1966. See Section 7, below.*]

[*Commission on Judicial Appointments—Membership*]

SEC. 7. The Commission on Judicial Appointments consists of the Chief Justice, the Attorney General, and the presiding justice of the court of appeal of the affected district or, if there are 2 or more presiding justices, the one who has presided longest or, when a nomination or appointment to the Supreme Court is to be considered, the presiding justice who has presided longest on any court of appeal. [*New section adopted November 8, 1966.*]

[*Commission on Judicial Performance—Membership*]

SEC. 8. (a) The Commission on Judicial Performance consists of one judge of a court of appeal, one judge of a superior court, and one judge of a municipal court, each appointed by the Supreme Court; 2 members of the State Bar of California who have practiced law in this State for 10 years, each appointed by the Governor; and 6 citizens who are not judges, retired judges, or members of the State Bar of California, 2 of whom shall be appointed by the Governor, 2 by the Senate Committee on Rules, and 2 by the Speaker of the Assembly. Except as provided in subdivisions (b) and (c), all terms are for 4 years. No member shall serve more than 2 4-year terms, or for more than a total of 10 years if appointed to fill a vacancy. A vacancy in the membership on the Commission on Judicial Performance otherwise designated for a municipal court judge shall be filled by a judge of the superior court in the case of an appointment made when fewer than 10 counties have municipal courts.

(b) Commission membership terminates if a member ceases to hold the position that qualified the member for appointment. A vacancy shall be filled by the appointing power for the remainder of the term. A member whose term has expired may continue to serve until the vacancy has been filled by the appointing power. Appointing powers may appoint members who are already serving on the commission prior to March 1, 1995, to a single 2-year term, but may not appoint them to an additional term thereafter.

(c) To create staggered terms among the members of the Commission on Judicial Performance, the following members shall be appointed, as follows:

(1) Two members appointed by the Supreme Court to a term commencing March 1, 1995, shall each serve a term of 2 years and may be reappointed to one full term.

(2) One attorney appointed by the Governor to a term commencing March 1, 1995, shall serve a term of 2 years and may be reappointed to one full term.

(3) One citizen member appointed by the Governor to a term commencing March 1, 1995, shall serve a term of 2 years and may be reappointed to one full term.

(4) One member appointed by the Senate Committee on Rules to a term commencing March 1, 1995, shall serve a term of 2 years and may be reappointed to one full term.

(5) One member appointed by the Speaker of the Assembly to a term commencing March 1, 1995, shall serve a term of 2 years and may be reappointed to one full term.

(6) All other members shall be appointed to full 4-year terms commencing March 1, 1995. [*As amended June 2, 1998.*]

SEC. 9. [*Repealed November 8, 1966. See Section 9, below.*]

[*State Bar*]

SEC. 9. The State Bar of California is a public corporation. Every person admitted and licensed to practice law in this State is and shall be a member of the State Bar except while holding office as a judge of a court of record. [*New section adopted November 8, 1966.*]

SEC. 10. [*Repealed November 8, 1966. See Section 10, below.*]

[*Jurisdiction—Original*]

SEC. 10. The Supreme Court, courts of appeal, superior courts, and their judges have original jurisdiction in habeas corpus proceedings. Those courts also have original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition. The appellate division of the superior court has original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition directed to the superior court in causes subject to its appellate jurisdiction.

Superior courts have original jurisdiction in all other causes except those given by statute to other trial courts.

The court may make such comment on the evidence and the testimony and credibility of any witness as in its opinion is necessary for the proper determination of the cause. [*As amended June 2, 1998.*]

SEC. 10a. [*Repealed November 8, 1966.*]

SEC. 10b. [*Repealed November 8, 1966.*]

[*Jurisdiction—Appellate*]

SEC. 11. (a) The Supreme Court has appellate jurisdiction when judgment of death has been pronounced. With that exception courts of appeal have appellate jurisdiction when superior courts have original jurisdiction in causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995, and in other causes prescribed by statute. When appellate jurisdiction in civil causes is determined by the amount in controversy, the Legislature may change the appellate jurisdiction of the courts of appeal by changing the jurisdictional amount in controversy.

(b) Except as provided in subdivision (a), the appellate division of the superior court has appellate jurisdiction in causes prescribed by statute.

(c) The Legislature may permit courts exercising appellate jurisdiction to take evidence and make findings of fact when jury trial is waived or not a matter of right. [*As amended June 2, 1998.*]

[*Transfer of Causes—Jurisdiction—Review of Decisions*]

SEC. 12. (a) The Supreme Court may, before decision, transfer to itself a cause in a court of appeal. It may, before decision, transfer a cause from itself to a court of appeal or from one court of appeal or division to another. The court to which a cause is transferred has jurisdiction.

(b) The Supreme Court may review the decision of a court of appeal in any cause.

(c) The Judicial Council shall provide, by rules of court, for the time and procedure for transfer and for review, including, among other things, provisions for the time and procedure for transfer with instructions, for review of all or part of a decision, and for remand as improvidently granted.

(d) This section shall not apply to an appeal involving a judgment of death. [*As amended November 6, 1984. Operative May 6, 1985.*]

[*Judgment—When Set Aside*]

SEC. 13. No judgment shall be set aside, or new trial granted, in any cause, on the ground of misdirection of the jury, or of the improper admission or rejection of evidence, or for any error as to any matter of pleading, or for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice. [*New section adopted November 8, 1966.*]

SEC. 14. [*Repealed November 8, 1966. See Section 14, below.*]

[*Supreme Court and Appellate Court—Published Opinions*]

SEC. 14. The Legislature shall provide for the prompt publication of such opinions of the Supreme Court and courts of appeal as the Supreme Court deems appropriate, and those opinions shall be available for publication by any person.

Decisions of the Supreme Court and courts of appeal that determine causes shall be in writing with reasons stated. [*New section adopted November 8, 1966.*]

[*Judges—Eligibility*]

SEC. 15. A person is ineligible to be a judge of a court of record unless for 5 years immediately preceding selection to a municipal court or 10 years immediately preceding selection to other courts, the person has been a member of the State Bar or served as a judge of a court of record in this State. A judge eligible for municipal court service may be assigned by the Chief Justice to serve on any court. [*As amended November 8, 1994. Operative January 1, 1995.*]

SEC. 15.5. [*Repealed January 1, 1995.*]

[*Judges—Elections—Terms—Vacancies*]

SEC. 16. (a) Judges of the Supreme Court shall be elected at large and judges of courts of appeal shall be elected in their districts at general elections at the same time and places as the Governor. Their terms are 12 years beginning the Monday after January 1 following their election, except that a judge elected to an unexpired term serves the remainder of the term. In

creating a new court of appeal district or division the Legislature shall provide that the first elective terms are 4, 8, and 12 years.

(b) (1) In counties in which there is no municipal court, judges of superior courts shall be elected in their counties at general elections except as otherwise necessary to meet the requirements of federal law. In the latter case the Legislature, by two-thirds vote of the membership of each house thereof, with the advice of judges within the affected court, may provide for their election by the system prescribed in subdivision (d), or by any other arrangement. The Legislature may provide that an unopposed incumbent's name not appear on the ballot.

(2) In counties in which there is one or more municipal court districts, judges of superior and municipal courts shall be elected in their counties or districts at general elections. The Legislature may provide that an unopposed incumbent's name not appear on the ballot.

(c) Terms of judges of superior courts are 6 years beginning the Monday after January 1 following their election. A vacancy shall be filled by election to a full term at the next general election after the second January 1 following the vacancy, but the Governor shall appoint a person to fill the vacancy temporarily until the elected judge's term begins.

(d) Within 30 days before August 16 preceding the expiration of the judge's term, a judge of the Supreme Court or a court of appeal may file a declaration of candidacy to succeed to the office presently held by the judge. If the declaration is not filed, the Governor before September 16 shall nominate a candidate. At the next general election, only the candidate so declared or nominated may appear on the ballot, which shall present the question whether the candidate shall be elected. The candidate shall be elected upon receiving a majority of the votes on the question. A candidate not elected may not be appointed to that court but later may be nominated and elected.

The Governor shall fill vacancies in those courts by appointment. An appointee holds office until the Monday after January 1 following the first general election at which the appointee had the right to become a candidate or until an elected judge qualifies. A nomination or appointment by the Governor is effective when confirmed by the Commission on Judicial Appointments.

Electors of a county, by majority of those voting and in a manner the Legislature shall provide, may make this system of selection applicable to judges of superior courts. [*As amended June 2, 1998.*]

[*Judges—Restrictions, Other Employment, and Benefits*]

SEC. 17. A judge of a court of record may not practice law and during the term for which the judge was selected is ineligible for public employment or public office other than judicial employment or judicial office, except a judge of a court of record may accept a part-time teaching position

that is outside the normal hours of his or her judicial position and that does not interfere with the regular performance of his or her judicial duties while holding office. A judge of a trial court of record may, however, become eligible for election to other public office by taking a leave of absence without pay prior to filing a declaration of candidacy. Acceptance of the public office is a resignation from the office of judge.

A judicial officer may not receive fines or fees for personal use.

A judicial officer may not earn retirement service credit from a public teaching position while holding judicial office. [*As amended November 8, 1988.*]

[*Judges—Discipline*]

SEC. 18. (a) A judge is disqualified from acting as a judge, without loss of salary, while there is pending (1) an indictment or an information charging the judge in the United States with a crime punishable as a felony under California or federal law, or (2) a petition to the Supreme Court to review a determination by the Commission on Judicial Performance to remove or retire a judge.

(b) The Commission on Judicial Performance may disqualify a judge from acting as a judge, without loss of salary, upon notice of formal proceedings by the commission charging the judge with judicial misconduct or disability.

(c) The Commission on Judicial Performance shall suspend a judge from office without salary when in the United States the judge pleads guilty or no contest or is found guilty of a crime punishable as a felony under California or federal law or of any other crime that involves moral turpitude under that law. If the conviction is reversed, suspension terminates, and the judge shall be paid the salary for the judicial office held by the judge for the period of suspension. If the judge is suspended and the conviction becomes final, the Commission on Judicial Performance shall remove the judge from office.

(d) Except as provided in subdivision (f), the Commission on Judicial Performance may (1) retire a judge for disability that seriously interferes with the performance of the judge's duties and is or is likely to become permanent, or (2) censure a judge or former judge or remove a judge for action occurring not more than 6 years prior to the commencement of the judge's current term or of the former judge's last term that constitutes willful misconduct in office, persistent failure or inability to perform the judge's duties, habitual intemperance in the use of intoxicants or drugs, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or (3) publicly or privately admonish a judge or former judge found to have engaged in an improper action or dereliction of duty. The commission may also bar a former judge who has been censured from receiving an assignment, appointment, or reference of work

from any California state court. Upon petition by the judge or former judge, the Supreme Court may, in its discretion, grant review of a determination by the commission to retire, remove, censure, admonish, or disqualify pursuant to subdivision (b) a judge or former judge. When the Supreme Court reviews a determination of the commission, it may make an independent review of the record. If the Supreme Court has not acted within 120 days after granting the petition, the decision of the commission shall be final.

(e) A judge retired by the commission shall be considered to have retired voluntarily. A judge removed by the commission is ineligible for judicial office, including receiving an assignment, appointment, or reference of work from any California state court, and pending further order of the court is suspended from practicing law in this State. The State Bar may institute appropriate attorney disciplinary proceedings against any judge who retires or resigns from office with judicial disciplinary charges pending.

(f) A determination by the Commission on Judicial Performance to admonish or censure a judge or former judge of the Supreme Court or remove or retire a judge of the Supreme Court shall be reviewed by a tribunal of 7 court of appeal judges selected by lot.

(g) No court, except the Supreme Court, shall have jurisdiction in a civil action or other legal proceeding of any sort brought against the commission by a judge. Any request for injunctive relief or other provisional remedy shall be granted or denied within 90 days of the filing of the request for relief. A failure to comply with the time requirements of this section does not affect the validity of commission proceedings.

(h) Members of the commission, the commission staff, and the examiners and investigators employed by the commission shall be absolutely immune from suit for all conduct at any time in the course of their official duties. No civil action may be maintained against a person, or adverse employment action taken against a person, by any employer, public or private, based on statements presented by the person to the commission.

(i) The Commission on Judicial Performance shall make rules implementing this section, including, but not limited to, the following:

(1) The commission shall make rules for the investigation of judges. The commission may provide for the confidentiality of complaints to and investigations by the commission.

(2) The commission shall make rules for formal proceedings against judges when there is cause to believe there is a disability or wrongdoing within the meaning of subdivision (d).

(j) When the commission institutes formal proceedings, the notice of charges, the answer, and all subsequent papers and proceedings shall be open to the public for all formal proceedings instituted after February 28, 1995.

(k) The commission may make explanatory statements.

(*l*) The budget of the commission shall be separate from the budget of any other state agency or court.

(m) The Supreme Court shall make rules for the conduct of judges, both on and off the bench, and for judicial candidates in the conduct of their campaigns. These rules shall be referred to as the Code of Judicial Ethics. [*As amended November 8, 1994. Operative March 1, 1995.*]

[*Subordinate Judicial Officers—Discipline*]

SEC. 18.1. The Commission on Judicial Performance shall exercise discretionary jurisdiction with regard to the oversight and discipline of subordinate judicial officers, according to the same standards, and subject to review upon petition to the Supreme Court, as specified in Section 18.

No person who has been found unfit to serve as a subordinate judicial officer after a hearing before the Commission on Judicial Performance shall have the requisite status to serve as a subordinate judicial officer.

This section does not diminish or eliminate the responsibility of a court to exercise initial jurisdiction to discipline or dismiss a subordinate judicial officer as its employee. [*New section adopted June 2, 1998.*]

[*Disciplined Judge Under Consideration for Judicial Appointment*]

SEC. 18.5. (a) Upon request, the Commission on Judicial Performance shall provide to the Governor of any State of the Union the text of any private admonishment, advisory letter, or other disciplinary action together with any information that the Commission on Judicial Performance deems necessary to a full understanding of the commission's action, with respect to any applicant whom the Governor of any State of the Union indicates is under consideration for any judicial appointment.

(b) Upon request, the Commission on Judicial Performance shall provide the President of the United States the text of any private admonishment, advisory letter, or other disciplinary action together with any information that the Commission on Judicial Performance deems necessary to a full understanding of the commission's action, with respect to any applicant whom the President indicates is under consideration for any federal judicial appointment.

(c) Upon request, the Commission on Judicial Performance shall provide the Commission on Judicial Appointments the text of any private admonishment, advisory letter, or other disciplinary action together with any information that the Commission on Judicial Performance deems necessary to a full understanding of the commission action, with respect to any applicant whom the Commission on Judicial Appointments indicates is under consideration for any judicial appointment.

(d) All information released under this section shall remain confidential and privileged.

(e) Notwithstanding subdivision (d), any information released pursuant to this section shall also be provided to the applicant about whom the information was requested.

(f) ''Private admonishment'' refers to a disciplinary action against a judge by the Commission on Judicial Performance as authorized by subdivision (c) of Section 18 of Article VI, as amended November 8, 1988. [*New section adopted November 8, 1994. Operative March 1, 1995.*]

[*Judges—Compensation*]

SEC. 19. The Legislature shall prescribe compensation for judges of courts of record.

A judge of a court of record may not receive the salary for the judicial office held by the judge while any cause before the judge remains pending and undetermined for 90 days after it has been submitted for decision. [*As amended November 5, 1974.*]

SEC. 20. [*Repealed November 8, 1966. See Section 20, below.*]

[*Judges—Retirement—Disability*]

SEC. 20. The Legislature shall provide for retirement, with reasonable allowance, of judges of courts of record for age or disability. [*New section adopted November 8, 1966.*]

SEC. 21. [*Repealed November 8, 1966. See Section 21, below.*]

[*Temporary Judges*]

SEC. 21. On stipulation of the parties litigant the court may order a cause to be tried by a temporary judge who is a member of the State Bar, sworn and empowered to act until final determination of the cause. [*New section adopted November 8, 1966.*]

[*Appointment of Officers—Subordinate Judicial Duties*]

SEC. 22. The Legislature may provide for the appointment by trial courts of record of officers such as commissioners to perform subordinate judicial duties. [*New section adopted November 8, 1966.*]

SEC. 23. [*Repealed November 8, 1966. See Section 23, below.*]

[*Superior and Municipal Court Consolidation*]

SEC. 23. (a) The purpose of the amendments to Sections 1, 4, 5, 6, 8, 10, 11, and 16, of this article, and the amendments to Section 16 of Article I, approved at the June 2, 1998, primary election is to permit the Legislature to provide for the abolition of the municipal courts and unify their operations within the superior courts. Notwithstanding Section 8 of Article IV, the implementation of, and orderly transition under, the provisions of the measure adding this section may include urgency statutes that create or abolish offices or change the salaries, terms, or duties of offices, or grant

franchises or special privileges, or create vested rights or interests, where otherwise permitted under this Constitution.

(b) When the superior and municipal courts within a county are unified, the judgeships in each municipal court in that county are abolished and the previously selected municipal court judges shall become judges of the superior court in that county. The term of office of a previously selected municipal court judge is not affected by taking office as a judge of the superior court. The 10-year membership or service requirement of Section 15 does not apply to a previously selected municipal court judge. Pursuant to Section 6, the Judicial Council may prescribe appropriate education and training for judges with regard to trial court unification.

(c) Except as provided by statute to the contrary, in any county in which the superior and municipal courts become unified, the following shall occur automatically in each preexisting superior and municipal court:

(1) Previously selected officers, employees, and other personnel who serve the court become the officers and employees of the superior court.

(2) Preexisting court locations are retained as superior court locations.

(3) Preexisting court records become records of the superior court.

(4) Pending actions, trials, proceedings, and other business of the court become pending in the superior court under the procedures previously applicable to the matters in the court in which the matters were pending.

(5) Matters of a type previously within the appellate jurisdiction of the superior court remain within the jurisdiction of the appellate division of the superior court.

(6) Matters of a type previously subject to rehearing by a superior court judge remain subject to rehearing by a superior court judge, other than the judge who originally heard the matter.

(7) Penal Code procedures that necessitate superior court review of, or action based on, a ruling or order by a municipal court judge shall be performed by a superior court judge other than the judge who originally made the ruling or order. [*New section adopted June 2, 1998.*]

SEC. 24. [*Repealed November 8, 1966.*]

SEC. 26. [*Repealed November 8, 1966.*]

ARTICLE VII*

PUBLIC OFFICERS AND EMPLOYEES

[*Civil Service*]

SECTION 1. (a) The civil service includes every officer and employee of the State except as otherwise provided in this Constitution.

(b) In the civil service permanent appointment and promotion shall be made under a general system based on merit ascertained by competitive examination. [*New section adopted June 8, 1976.*]

[*Personnel Board—Membership and Compensation*]

SEC. 2. (a) There is a Personnel Board of 5 members appointed by the Governor and approved by the Senate, a majority of the membership concurring, for 10-year terms and until their successors are appointed and qualified. Appointment to fill a vacancy is for the unexpired portion of the term. A member may be removed by concurrent resolution adopted by each house, two-thirds of the membership of each house concurring.

(b) The board annually shall elect one of its members as presiding officer.

(c) The board shall appoint and prescribe compensation for an executive officer who shall be a member of the civil service but not a member of the board. [*New section adopted June 8, 1976.*]

[*Personnel Board—Duties*]

SEC. 3. (a) The board shall enforce the civil service statutes and, by majority vote of all its members, shall prescribe probationary periods and classifications, adopt other rules authorized by statute, and review disciplinary actions.

(b) The executive officer shall administer the civil service statutes under rules of the board. [*New section adopted June 8, 1976.*]

[*Exempt Positions*]

SEC. 4. The following are exempt from civil service:

(a) Officers and employees appointed or employed by the Legislature, either house, or legislative committees.

(b) Officers and employees appointed or employed by councils, commissions or public corporations in the judicial branch or by a court of record or officer thereof.

(c) Officers elected by the people and a deputy and an employee selected by each elected officer.

(d) Members of boards and commissions.

(e) A deputy or employee selected by each board or commission either appointed by the Governor or authorized by statute.

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* New Article VII adopted June 8, 1976.

(f) State officers directly appointed by the Governor with or without the consent or confirmation of the Senate and the employees of the Governor's office, and the employees of the Lieutenant Governor's office directly appointed or employed by the Lieutenant Governor.

(g) A deputy or employee selected by each officer, except members of boards and commissions, exempted under Section 4(f).

(h) Officers and employees of the University of California and the California State Colleges.

(i) The teaching staff of schools under the jurisdiction of the Department of Education or the Superintendent of Public Instruction.

(j) Member, inmate, and patient help in state homes, charitable or correctional institutions, and state facilities for mentally ill or retarded persons.

(k) Members of the militia while engaged in military service.

(*l*) Officers and employees of district agricultural associations employed less than 6 months in a calendar year.

(m) In addition to positions exempted by other provisions of this section, the Attorney General may appoint or employ six deputies or employees, the Public Utilities Commission may appoint or employ one deputy or employee, and the Legislative Counsel may appoint or employ two deputies or employees. [*New section adopted June 8, 1976.*]

[*Temporary Appointments*]

SEC. 5. A temporary appointment may be made to a position for which there is no employment list. No person may serve in one or more positions under temporary appointment longer than 9 months in 12 consecutive months. [*New section adopted June 8, 1976.*]

[*Veterans' Preferences—Special Rules*]

SEC. 6. (a) The Legislature may provide preferences for veterans and their surviving spouses.

(b) The board by special rule may permit persons in exempt positions, brought under civil service by constitutional provision, to qualify to continue in their positions.

(c) When the State undertakes work previously performed by a county, city, public district of this State or by a federal department or agency, the board by special rule shall provide for persons who previously performed this work to qualify to continue in their positions in the state civil service subject to such minimum standards as may be established by statute. [*New section adopted June 8, 1976.*]

[*Dual Office Holding*]

SEC. 7. A person holding a lucrative office under the United States or other power may not hold a civil office of profit. A local officer or post-

master whose compensation does not exceed 500 dollars per year or an officer in the militia or a member of a reserve component of the armed forces of the United States except where on active federal duty for more than 30 days in any year is not a holder of a lucrative office, nor is the holding of a civil office of profit affected by this military service. [*New section adopted June 8, 1976.*]

[*Disqualification From Holding Office or Serving on Jury—Free Suffrage*]

SEC. 8. (a) Every person shall be disqualified from holding any office of profit in this State who shall have been convicted of having given or offered a bribe to procure personal election or appointment.

(b) Laws shall be made to exclude persons convicted of bribery, perjury, forgery, malfeasance in office, or other high crimes from office or serving on juries. The privilege of free suffrage shall be supported by laws regulating elections and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practice. [*New section adopted June 8, 1976.*]

[*Persons or Organizations Advocating Overthrow of Government*]

SEC. 9. Notwithstanding any other provision of this Constitution, no person or organization which advocates the overthrow of the Government of the United States or the State by force or violence or other unlawful means or who advocates the support of a foreign government against the United States in the event of hostilities shall:

(a) Hold any office or employment under this State, including but not limited to the University of California, or with any county, city or county, city, district, political subdivision, authority, board, bureau, commission or other public agency of this State; or

(b) Receive any exemption from any tax imposed by this State or any county, city or county, city, district, political subdivision, authority, board, bureau, commission or other public agency of this State.

The Legislature shall enact such laws as may be necessary to enforce the provisions of this section. [*New section adopted June 8, 1976.*]

[*Elected Officials—Disqualification for Libelous or Slanderous Campaign Statements*]

SEC. 10. (a) No person who is found liable in a civil action for making libelous or slanderous statements against an opposing candidate during the course of an election campaign for any federal, statewide, Board of Equalization, or legislative office or for any county, city and county, city, district, or any other local elective office shall retain the seat to which he or she is elected, where it is established that the libel or slander was a major contributing cause in the defeat of an opposing candidate.

A libelous or slanderous statement shall be deemed to have been made by a person within the meaning of this section if that person actually made the statement or if the person actually or constructively assented to, authorized, or ratified the statement.

''Federal office,'' as used in this section means the office of United States Senator and Member of the House of Representatives; and to the extent that the provisions of this section do not conflict with any provision of federal law, it is intended that candidates seeking the office of United States Senator or Member of the House of Representatives comply with this section.

(b) In order to determine whether libelous or slanderous statements were a major contributing cause in the defeat of an opposing candidate, the trier of fact shall make a separate, distinct finding on that issue. If the trier of fact finds that libel or slander was a major contributing cause in the defeat of an opposing candidate and that the libelous or slanderous statement was made with knowledge that it was false or with reckless disregard of whether it was false or true, the person holding office shall be disqualified from or shall forfeit that office as provided in subdivision (d). The findings required by this section shall be in writing and shall be incorporated as part of the judgment.

(c) In a case where a person is disqualified from holding office or is required to forfeit an office under subdivisions (a) and (b), that disqualification or forfeiture shall create a vacancy in office, which vacancy shall be filled in the manner provided by law for the filling of a vacancy in that particular office.

(d) Once the judgment of liability is entered by the trial court and the time for filing a notice of appeal has expired, or all possibility of direct attack in the courts of this State has been finally exhausted, the person shall be disqualified from or shall forfeit the office involved in that election and shall have no authority to exercise the powers or perform the duties of the office.

(e) This section shall apply to libelous or slanderous statements made on or after the effective date of this section. [*New section adopted June 5, 1984.*]

[*Legislators' and Judges' Retirement Systems*]

SEC. 11. (a) The Legislators' Retirement System shall not pay any unmodified retirement allowance or its actuarial equivalent to any person who on or after January 1, 1987, entered for the first time any state office for which membership in the Legislators' Retirement System was elective or to any beneficiary or survivor of such a person, which exceeds the higher of (1) the salary receivable by the person currently serving in the office in which the retired person served or (2) the highest salary that was received by the retired person while serving in that office.

(b) The Judges' Retirement System shall not pay any unmodified retirement allowance or its actuarial equivalent to any person who on or after January 1, 1987, entered for the first time any judicial office subject to the Judges' Retirement System or to any beneficiary or survivor of such a person, which exceeds the higher of (1) the salary receivable by the person currently serving in the judicial office in which the retired person served or (2) the highest salary that was received by the retired person while serving in that judicial office.

(c) The Legislature may define the terms used in this section.

(d) If any part of this measure or the application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications which reasonably can be given effect without the invalid provision or application. [*As amended November 6, 1990. Initiative measure.*]

ARTICLE VIII. [*Repealed November 8, 1966.*]

ARTICLE IX

EDUCATION

[*Legislative Policy*]

SECTION 1. A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement.

[*Superintendent of Public Instruction—Election—Date of Office—Number of Terms*]

SEC. 2. A Superintendent of Public Instruction shall be elected by the qualified electors of the State at each gubernatorial election. The Superintendent of Public Instruction shall enter upon the duties of the office on the first Monday after the first day of January next succeeding each gubernatorial election. No Superintendent of Public Instruction may serve more than 2 terms. [*As amended November 6, 1990. Initiative measure.*]

[*Deputy and Associate Superintendents of Public Instruction*]

SEC. 2.1. The State Board of Education, on nomination of the Superintendent of Public Instruction, shall appoint one Deputy Superintendent of Public Instruction and three Associate Superintendents of Public Instruction who shall be exempt from state civil service and whose terms of office shall be four years.

This section shall not be construed as prohibiting the appointment, in accordance with law, of additional Associate Superintendents of Public Instruction subject to state civil service. [*New section adopted November 5, 1946.*]

[*County Superintendents of Schools*]

SEC. 3. A Superintendent of Schools for each county may be elected by the qualified electors thereof at each gubernatorial election or may be appointed by the county board of education, and the manner of the selection shall be determined by a majority vote of the electors of the county voting on the question; provided, that two or more counties may, by an election conducted pursuant to Section 3.2 of this article, unite for the purpose of electing or appointing one joint superintendent for the counties so uniting. [*As amended November 2, 1976.*]

[*County Superintendents of Schools—Qualifications and Salaries*]

SEC. 3.1. (a) Notwithstanding any provision of this Constitution to the contrary, the Legislature shall prescribe the qualifications required of county superintendents of schools, and for these purposes shall classify the several counties in the State.

(b) Notwithstanding any provision of this Constitution to the contrary, the county board of education or joint county board of education, as the case may be, shall fix the salary of the county superintendent of schools or the joint county superintendent of schools, respectively. [*As amended November 2, 1976.*]

[*Joint County Board of Education—Joint County Superintendent of Schools*]

SEC. 3.2. Notwithstanding any provision of this Constitution to the contrary, any two or more chartered counties, or nonchartered counties, or any combination thereof, may, by a majority vote of the electors of each such county voting on the proposition at an election called for that purpose in each such county, establish one joint board of education and one joint county superintendent of schools for the counties so uniting. A joint county board of education and a joint county superintendent of schools shall be governed by the general statutes and shall not be governed by the provisions of any county charter. [*New section adopted November 2, 1976.*]

[*County Boards of Education—Qualifications and Terms of Office*]

SEC. 3.3. Except as provided in Section 3.2 of this article, it shall be competent to provide in any charter framed for a county under any provision of this Constitution, or by the amendment of any such charter, for the election of the members of the county board of education of such county and for their qualifications and terms of office. [*As amended November 2, 1976.*]

SEC. 4. [*Repealed November 3, 1964.*]

[*Common School System*]

SEC. 5. The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established.

[*Public Schools—Salaries*]

SEC. 6. Each person, other than a substitute employee, employed by a school district as a teacher or in any other position requiring certification qualifications shall be paid a salary which shall be at the rate of an annual salary of not less than twenty-four hundred dollars ($2,400) for a person serving full time, as defined by law.

[*Public School System*]

The Public School System shall include all kindergarten schools, elementary schools, secondary schools, technical schools, and state colleges, established in accordance with law and, in addition, the school districts and the other agencies authorized to maintain them. No school or college or any other part of the Public School System shall be, directly or indirectly, transferred from the Public School System or placed under the jurisdiction of any authority other than one included within the Public School System.

[*Support of Public School System—State Aid*]

The Legislature shall add to the State School Fund such other means from the revenues of the State as shall provide in said fund for apportionment in each fiscal year, an amount not less than one hundred eighty dollars ($180) per pupil in average daily attendance in the kindergarten schools, elementary schools, secondary schools, and technical schools in the Public School System during the next preceding fiscal year.

The entire State School Fund shall be apportioned in each fiscal year in such manner as the Legislature may provide, through the school districts and other agencies maintaining such schools, for the support of, and aid to, kindergarten schools, elementary schools, secondary schools, and technical schools except that there shall be apportioned to each school district in each fiscal year not less than one hundred twenty dollars ($120) per pupil in average daily attendance in the district during the next preceding fiscal year and except that the amount apportioned to each school district in each fiscal year shall be not less than twenty-four hundred dollars ($2,400).

Solely with respect to any retirement system provided for in the charter of any county or city and county pursuant to the provisions of which the contributions of, and benefits to, certificated employees of a school district who are members of such system are based upon the proportion of the salaries of such certificated employees contributed by said county or city

and county, all amounts apportioned to said county or city and county, or to school districts therein, pursuant to the provisions of this section shall be considered as though derived from county or city and county school taxes for the support of county and city and county government and not money provided by the State within the meaning of this section. [*As amended November 5, 1974.*]

[*School Districts—Bonds*]

SEC. 6½. Nothing in this Constitution contained shall forbid the formation of districts for school purposes situate in more than one county or the issuance of bonds by such districts under such general laws as have been or may hereafter be prescribed by the Legislature; and the officers mentioned in such laws shall be authorized to levy and assess such taxes and perform all such other acts as may be prescribed therein for the purpose of paying such bonds and carrying out the other powers conferred upon such districts; *provided,* that all such bonds shall be issued subject to the limitations prescribed in section eighteen† of article eleven hereof. [*New section adopted November 7, 1922.*]

[*Boards of Education*]

SEC. 7. The Legislature shall provide for the appointment or election of the State Board of Education and a board of education in each county or for the election of a joint county board of education for two or more counties. [*As amended November 2, 1976.*]

[*Free Textbooks*]

SEC. 7.5. The State Board of Education shall adopt textbooks for use in grades one through eight throughout the State, to be furnished without cost as provided by statute. [*New section adopted June 2, 1970.*]

[*Sectarian Schools—Public Money—Doctrines*]

SEC. 8. No public money shall ever be appropriated for the support of any sectarian or denominational school, or any school not under the exclusive control of the officers of the public schools; nor shall any sectarian or denominational doctrine be taught, or instruction thereon be permitted, directly or indirectly, in any of the common schools of this State.

[*University of California*]

SEC. 9. (a) The University of California shall constitute a public trust, to be administered by the existing corporation known as ''The Regents of the University of California,'' with full powers of organization and government, subject only to such legislative control as may be necessary to insure the security of its funds and compliance with the terms of

† Former Section 18 of Article XI added to Article XIII as Section 40, June 2, 1970 and repealed November 5, 1974.

the endowments of the university and such competitive bidding procedures as may be made applicable to the university by statute for the letting of construction contracts, sales of real property, and purchasing of materials, goods, and services. Said corporation shall be in form a board composed of seven ex officio members, which shall be: the Governor, the Lieutenant Governor, the Speaker of the Assembly, the Superintendent of Public Instruction, the president and the vice president of the alumni association of the university and the acting president of the university, and 18 appointive members appointed by the Governor and approved by the Senate, a majority of the membership concurring; provided, however that the present appointive members shall hold office until the expiration of their present terms.

(b) The terms of the members appointed prior to November 5, 1974, shall be 16 years; the terms of two appointive members to expire as heretofore on March 1st of every even-numbered calendar year, and two members shall be appointed for terms commencing on March 1, 1976, and on March 1 of each year thereafter; provided that no such appointments shall be made for terms to commence on March 1, 1979, or on March 1 of each fourth year thereafter, to the end that no appointment to the regents for a newly commencing term shall be made during the first year of any gubernatorial term of office. The terms of the members appointed for terms commencing on and after March 1, 1976, shall be 12 years. During the period of transition until the time when the appointive membership is comprised exclusively of persons serving for terms of 12 years, the total number of appointive members may exceed the numbers specified in the preceeding paragraph.

In case of any vacancy, the term of office of the appointee to fill such vacancy, who shall be appointed by the Governor and approved by the Senate, a majority of the membership concurring, shall be for the balance of the term for which such vacancy exists.

(c) The members of the board may, in their discretion, following procedures established by them and after consultation with representatives of faculty and students of the university, including appropriate officers of the academic senate and student governments, appoint to the board either or both of the following persons as members with all rights of participation: a member of the faculty at a campus of the university or of another institution of higher education; a person enrolled as a student at a campus of the university for each regular academic term during his service as a member of the board. Any person so appointed shall serve for not less than one year commencing on July 1.

(d) Regents shall be able persons broadly reflective of the economic, cultural, and social diversity of the State, including ethnic minorities and women. However, it is not intended that formulas or specific ratios be applied in the selection of regents.

(e) In the selection of the Regents, the Governor shall consult an advisory committee composed as follows: The Speaker of the Assembly and two public members appointed by the Speaker, the President Pro Tempore of the Senate and two public members appointed by the Rules Committee of the Senate, two public members appointed by the Governor, the chairman of the regents of the university, an alumnus of the university chosen by the alumni association of the university, a student of the university chosen by the Council of Student Body Presidents, and a member of the faculty of the university chosen by the academic senate of the university. Public members shall serve for four years, except that one each of the initially appointed members selected by the Speaker of the Assembly, the President Pro Tempore of the Senate, and the Governor shall be appointed to serve for two years; student, alumni, and faculty members shall serve for one year and may not be regents of the university at the time of their service on the advisory committee.

(f) The Regents of the University of California shall be vested with the legal title and the management and disposition of the property of the university and of property held for its benefit and shall have the power to take and hold, either by purchase or by donation, or gift, testamentary or otherwise, or in any other manner, without restriction, all real and personal property for the benefit of the university or incidentally to its conduct; provided, however, that sales of university real property shall be subject to such competitive bidding procedures as may be provided by statute. Said corporation shall also have all the powers necessary or convenient for the effective administration of its trust, including the power to sue and to be sued, to use a seal, and to delegate to its committees or to the faculty of the university, or to others, such authority or functions as it may deem wise. The Regents shall receive all funds derived from the sale of lands pursuant to the act of Congress of July 2, 1862, and any subsequent acts amendatory thereof. The university shall be entirely independent of all political or sectarian influence and kept free therefrom in the appointment of its regents and in the administration of its affairs, and no person shall be debarred admission to any department of the university on account of race, religion, ethnic heritage, or sex.

(g) Meetings of the Regents of the University of California shall be public, with exceptions and notice requirements as may be provided by statute. [*As amended November 2, 1976.*]

SEC. 10. [*Repealed November 5, 1974.*]

SEC. 11. [*Repealed November 5, 1974.*]

SEC. 12. [*Repealed November 5, 1974.*]

SEC. 13. [*Repealed November 5, 1974.*]

[*School District Incorporation and Organization—Governing Board Powers*]

SEC. 14. The Legislature shall have power, by general law, to provide for the incorporation and organization of school districts, high school districts, and community college districts, of every kind and class, and may classify such districts.

The Legislature may authorize the governing boards of all school districts to initiate and carry on any programs, activities, or to otherwise act in any manner which is not in conflict with the laws and purposes for which school districts are established. [*As amended November 7, 1972. Operative July 1, 1973.*]

SEC. 15. [*Repealed November 5, 1974.*]

[*Boards of Education—City Charter Provisions*]

SEC. 16. (a) It shall be competent, in all charters framed under the authority given by Section 5 of Article XI, to provide, in addition to those provisions allowable by this Constitution, and by the laws of the State for the manner in which, the times at which, and the terms for which the members of boards of education shall be elected or appointed, for their qualifications, compensation and removal, and for the number which shall constitute any one of such boards.

[*Charter Amendments—Approval by Voters*]

(b) Notwithstanding Section 3 of Article XI, when the boundaries of a school district or community college district extend beyond the limits of a city whose charter provides for any or all of the foregoing with respect to the members of its board of education, no charter amendment effecting a change in the manner in which, the times at which, or the terms for which the members of the board of education shall be elected or appointed, for their qualifications, compensation, or removal, or for the number which shall constitute such board, shall be adopted unless it is submitted to and approved by a majority of all the qualified electors of the school district or community college district voting on the question. Any such amendment, and any portion of a proposed charter or a revised charter which would establish or change any of the foregoing provisions respecting a board of education, shall be submitted to the electors of the school district or community college district as one or more separate questions. The failure of any such separate question to be approved shall have the result of continuing in effect the applicable existing law with respect to that board of education. [*As amended June 6, 1978.*]

ARTICLE X*

WATER

[*State's Right of Eminent Domain*]

SECTION 1. The right of eminent domain is hereby declared to exist in the State to all frontages on the navigable waters of this State. [*New section adopted June 8, 1976.*]

[*Conservation and Beneficial Use of Water—Riparian Rights*]

SEC. 2. It is hereby declared that because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare. The right to water or to the use or flow of water in or from any natural stream or water course in this State is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water. Riparian rights in a stream or water course attach to, but to no more than so much of the flow thereof as may be required or used consistently with this section, for the purposes for which such lands are, or may be made adaptable, in view of such reasonable and beneficial uses; provided, however, that nothing herein contained shall be construed as depriving any riparian owner of the reasonable use of water of the stream to which the owner's land is riparian under reasonable methods of diversion and use, or as depriving any appropriator of water to which the appropriator is lawfully entitled. This section shall be self-executing, and the Legislature may also enact laws in the furtherance of the policy in this section contained. [*New section adopted June 8, 1976.*]

[*Tidelands*]

SEC. 3. All tidelands within two miles of any incorporated city, city and county, or town in this State, and fronting on the water of any harbor, estuary, bay, or inlet used for the purposes of navigation, shall be withheld from grant or sale to private persons, partnerships, or corporations; provided, however, that any such tidelands, reserved to the State solely for street purposes, which the Legislature finds and declares are not used for navigation purposes and are not necessary for such purposes may be sold to any town, city, county, city and county, municipal corporations, private persons, partnerships or corporations subject to such conditions as the

* New Article X adopted June 8, 1976.

Legislature determines are necessary to be imposed in connection with any such sales in order to protect the public interest. [*New section adopted June 8, 1976.*]

[*Access to Navigable Waters*]

SEC. 4. No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof. [*New section adopted June 8, 1976.*]

[*State Control of Water Use*]

SEC. 5. The use of all water now appropriated, or that may hereafter be appropriated, for sale, rental, or distribution, is hereby declared to be a public use, and subject to the regulation and control of the State, in the manner to be prescribed by law. [*New section adopted June 8, 1976.*]

[*Compensation for Water Use*]

SEC. 6. The right to collect rates or compensation for the use of water supplied to any county, city and county, or town, or the inhabitants thereof, is a franchise, and cannot be exercised except by authority of and in the manner prescribed by law. [*New section adopted June 8, 1976.*]

[*Acquisition of Real Property—Conformance to California Water Laws*]

SEC. 7. Whenever any agency of government, local, state, or federal, hereafter acquires any interest in real property in this State, the acceptance of the interest shall constitute an agreement by the agency to conform to the laws of California as to the acquisition, control, use, and distribution of water with respect to the land so acquired. [*New section adopted June 8, 1976.*]

ARTICLE X A*

WATER RESOURCES DEVELOPMENT

[*Article X A has no force or effect because Senate Bill No. 200 of the 1979–80 Regular Session of the Legislature was defeated by referendum vote June 8, 1982*]

[*Water Rights, Water Quality, and Fish and Wildlife Resources Guaranteed and Protected*]

SECTION 1. The people of the State hereby provide the following guarantees and protections in this article for water rights, water quality, and fish and wildlife resources. [*New section adopted November 4, 1980. Section has no force or effect because Senate Bill No. 200 of the 1979–80 Regular Session of the Legislature was defeated by referendum vote June 8, 1982.*]

[*Statutes for Protection of Fish and Wildlife Resources, Delta, Etc.*]

SEC. 2. No statute amending or repealing, or adding to, the provisions of the statute enacted by Senate Bill No. 200 † of the 1979–80 Regular Session of the Legislature which specify (1) the manner in which the State will protect fish and wildlife resources in the Sacramento-San Joaquin Delta, Suisun Marsh, and San Francisco Bay system westerly of the delta; (2) the manner in which the State will protect existing water rights in the Sacramento-San Joaquin Delta; and (3) the manner in which the State will operate the State Water Resources Development System to comply with water quality standards and water quality control plans, shall become effective unless approved by the electors in the same manner as statutes amending initiative statutes are approved; except that the Legislature may, by statute passed in each house by roll call vote entered in the journal, two-thirds of the membership concurring, amend or repeal, or add to, these provisions if the statute does not in any manner reduce the protection of the delta or fish and wildlife. [*New section adopted November 4, 1980. Section has no force or effect because Senate Bill No. 200 of the 1979–80 Regular Session of the Legislature was defeated by referendum vote June 8, 1982.*]

[*Appropriations of Water—Components of California Wild and Scenic Rivers System*]

SEC. 3. No water shall be available for appropriation by storage in, or by direct diversion from, any of the components of the California Wild and Scenic Rivers System, as such system exists on January 1, 1981, where such appropriation is for export of water into another major hydrologic basin of the State, as defined in the Department of Water Resources Bulletin

*New Article X A adopted November 4, 1980.

† Chapter 632, Statutes of 1980.

160-74, unless such export is expressly authorized prior to such appropriation by: (a) an initiative statute approved by the electors, or (b) the Legislature, by statute passed in each house by roll call vote entered in the journal, two-thirds of the membership concurring. [*New section adopted November 4, 1980. Section has no force or effect because Senate Bill No. 200 of the 1979–80 Regular Session of the Legislature was defeated by referendum vote June 8, 1982.*]

[*Statutes Amending, Repealing, or Adding to Delta Protection Act*]

SEC. 4. No statute amending or repealing, or adding to, the provisions of Part 4.5 (commencing with Section 12200) of Division 6 of the Water Code (the Delta Protection Act) shall become effective unless approved by the electors in the same manner as statutes amending initiative statutes are approved; except that the Legislature may, by statute passed in each house by roll call vote entered in the journal, two-thirds of the membership concurring, amend or repeal, or add to, these provisions if the statute does not in any manner reduce the protection of the delta or fish and wildlife. [*New section adopted November 4, 1980. Section has no force or effect because Senate Bill No. 200 of the 1979–80 Regular Session of the Legislature was defeated by referendum vote June 8, 1982.*]

[*Eminent Domain Proceedings to Acquire Water Rights or Contract Rights for Water or Water Quality Maintenance in Delta Prohibited*]

SEC. 5. No public agency may utilize eminent domain proceedings to acquire water rights, which are held for uses within the Sacramento-San Joaquin Delta as defined in Section 12220 of the Water Code, or any contract rights for water or water quality maintenance in the Delta for the purpose of exporting such water from the Delta. This provision shall not be construed to prohibit the utilization of eminent domain proceedings for the purpose of acquiring land or any other rights necessary for the construction of water facilities, including, but not limited to, facilities authorized in Chapter 8 (commencing with Section 12930) of Part 6 of Division 6 of the Water Code. [*New section adopted November 4, 1980. Section has no force or effect because Senate Bill No. 200 of the 1979–80 Regular Session of the Legislature was defeated by referendum vote June 8, 1982.*]

[*Actions and Proceedings*]

SEC. 6. (a) The venue of any of the following actions or proceedings brought in a superior court shall be Sacramento County:

(1) An action or proceeding to attack, review, set aside, void, or annul any provision of the statute enacted by Senate Bill No. 200 † of the 1979–80 Regular Session of the Legislature.

† Chapter 632, Statutes of 1980.

(2) An action or proceeding to attack, review, set aside, void, or annul the determination made by the Director of Water Resources and the Director of Fish and Game pursuant to subdivision (a) of Section 11255 of the Water Code.

(3) An action or proceeding which would have the effect of attacking, reviewing, preventing, or substantially delaying the construction, operation, or maintenance of the peripheral canal unit described in subdivision (a) of Section 11255 of the Water Code.

(4) An action or proceeding to require the State Water Resources Development System to comply with subdivision (b) of Section 11460 of the Water Code.

(5) An action or proceeding to require the Department of Water Resources or its successor agency to comply with the permanent agreement specified in subdivision (a) of Section 11256 of the Water Code.

(6) An action or proceeding to require the Department of Water Resources or its successor agency to comply with the provisions of the contracts entered into pursuant to Section 11456 of the Water Code.

(b) An action or proceeding described in paragraph (1) of subdivision (a) shall be commenced within one year after the effective date of the statute enacted by Senate Bill No. 200 † of the 1979–80 Regular Session of the Legislature. Any other action or proceeding described in subdivision (a) shall be commenced within one year after the cause of action arises unless a shorter period is otherwise provided by statute.

(c) The superior court or a court of appeals shall give preference to the actions or proceedings described in this section over all civil actions or proceedings pending in the court. The superior court shall commence hearing any such action or proceeding within six months after the commencement of the action or proceeding, provided that any such hearing may be delayed by joint stipulation of the parties or at the discretion of the court for good cause shown. The provisions of this section shall supersede any provisions of law requiring courts to give preference to other civil actions or proceedings. The provisions of this subdivision may be enforced by mandamus.

(d) The Supreme Court shall, upon the request of any party, transfer to itself, before a decision in the court of appeal, any appeal or petition for extraordinary relief from an action or proceeding described in this section, unless the Supreme Court determines that the action or proceeding is unlikely to substantially affect (1) the construction, operation, or maintenance of the peripheral canal unit described in subdivision (a) of Section 11255 of the Water Code, (2) compliance with subdivision (b) of Section 11460 of the Water Code, (3) compliance with the permanent agreement specified in Section 11256 of the Water Code, or (4) compliance with the provisions of the contracts entered into pursuant to Section 11456 of the

† Chapter 632, Statutes of 1980.

Water Code. The request for transfer shall receive preference on the Supreme Court's calendar. If the action or proceeding is transferred to the Supreme Court, the Supreme Court shall commence to hear the matter within six months of the transfer unless the parties by joint stipulation request additional time or the court, for good cause shown, grants additional time.

(e) The remedy prescribed by the court for an action or proceeding described in paragraph (4), (5), or (6) of subdivision (a) shall include, but need not be limited to, compliance with subdivision (b) of Section 11460 of the Water Code, the permanent agreement specified in Section 11256 of the Water Code, or the provisions of the contracts entered into pursuant to Section 11456 of the Water Code.

(f) The Board of Supervisors of the County of Sacramento may apply to the State Board of Control for actual costs imposed by the requirements of this section upon the county, and the State Board of Control shall pay such actual costs.

(g) Notwithstanding the provisions of this section, nothing in this Article shall be construed as prohibiting the Supreme Court from exercising the transfer authority contained in Article VI, Section 12 of the Constitution. [*New section adopted November 4, 1980. Section has no force or effect because Senate Bill No. 200 of the 1979–80 Regular Session of the Legislature was defeated by referendum vote June 8, 1982.*]

[*State Agencies' Exercise of Authorized Powers*]

SEC. 7. State agencies shall exercise their authorized powers in a manner consistent with the protections provided by this article. [*New section adopted November 4, 1980. Section has no force or effect because Senate Bill No. 200 of the 1979–80 Regular Session of the Legislature was defeated by referendum vote June 8, 1982.*]

[*Force or Effect of Article*]

SEC. 8. This article shall have no force or effect unless Senate Bill No. 200 † of the 1979–80 Regular Session of the Legislature is enacted and takes effect. [*New section adopted November 4, 1980. Section has no force or effect because Senate Bill No. 200 of the 1979–80 Regular Session of the Legislature was defeated by referendum vote June 8, 1982.*]

† Chapter 632, Statutes of 1980.

ARTICLE X B*

MARINE RESOURCES PROTECTION ACT OF 1990

[*Title*]

SECTION 1. This article shall be known and may be cited as the Marine Resources Protection Act of 1990. [*New section adopted November 6, 1990. Initiative measure.*]

[*Definitions*]

SEC. 2. (a) ''District'' means a fish and game district as defined in the Fish and Game Code by statute on January 1, 1990.

(b) Except as specifically provided in this article, all references to Fish and Game Code sections, articles, chapters, parts, and divisions are defined as those statutes in effect on January 1, 1990.

(c) ''Ocean waters'' means the waters of the Pacific Ocean regulated by the State.

(d) ''Zone'' means the Marine Resources Protection zone established pursuant to this article. The zone consists of the following:

(1) In waters less than 70 fathoms or within one mile, whichever is less, around the Channel Islands consisting of the Islands of San Miguel, Santa Rosa, Santa Cruz, Anacapa, San Nicolaus, Santa Barbara, Santa Catalina, and San Clemente.

(2) The area within three nautical miles offshore of the mainland coast, and the area within three nautical miles off any manmade breakwater, between a line extending due west from Point Arguello and a line extending due west from the Mexican border.

(3) In waters less than 35 fathoms between a line running 180 degrees true from Point Fermin and a line running 270 degrees true from the south jetty of Newport Harbor. [*New section adopted November 6, 1990. Initiative measure.*]

[*Gill and Trammel Nets—Usage*]

SEC. 3. (a) From January 1, 1991, to December 31, 1993, inclusive, gill nets or trammel nets may only be used in the zone pursuant to a nontransferable permit issued by the Department of Fish and Game pursuant to Section 5.

(b) On and after January 1, 1994, gill nets and trammel nets shall not be used in the zone. [*New section adopted November 6, 1990. Initiative measure.*]

[*Gill and Trammel Nets—Usage*]

SEC. 4. (a) Notwithstanding any other provision of law, gill nets and trammel nets may not be used to take any species of rockfish.

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* New Article X B adopted November 6, 1990. Initiative measure.

(b) In ocean waters north of Point Arguello on and after the effective date of this article, the use of gill nets and trammel nets shall be regulated by the provisions of Article 4 (commencing with Section 8660), Article 5 (commencing with Section 8680) and Article 6 (commencing with Section 8720) of Chapter 3 of Part 3 of Division 6 of the Fish and Game Code, or any regulation or order issued pursuant to these articles, in effect on January 1, 1990, except that as to Sections 8680, 8681, 8681.7, and 8682, and subdivisions (a) through (f), inclusive of Section 8681.5 of the Fish and Game Code, or any regulation or order issued pursuant to these sections, the provisions in effect on January 1, 1989, shall control where not in conflict with other provisions of this article, and shall be applicable to all ocean waters. Notwithstanding the provisions of this section, the Legislature shall not be precluded from imposing more restrictions on the use and/or possession of gill nets or trammel nets. The Director of the Department of Fish and Game shall not authorize the use of gill nets or trammel nets in any area where the use is not permitted even if the director makes specified findings. [*New section adopted November 6, 1990. Initiative measure.*]

[*Gill and Trammel Nets—Usage*]

SEC. 5. The Department of Fish and Game shall issue a permit to use a gill net or trammel net in the zone for the period specified in subdivision (a) of Section 3 to any applicant who meets both of the following requirements:

(a) Has a commercial fishing license issued pursuant to Sections 7850–7852.3 of the Fish and Game Code.

(b) Has a permit issued pursuant to Section 8681 of the Fish and Game Code and is presently the owner or operator of a vessel equipped with a gill net or trammel net. [*New section adopted November 6, 1990. Initiative measure.*]

[*Permit Fees*]

SEC. 6. The Department of Fish and Game shall charge the following fees for permits issued pursuant to Section 5 pursuant to the following schedule:

Calendar Year	Fee
1991	$250
1992	500
1993	1,000

[*New section adopted November 6, 1990. Initiative measure.*]

[*Permitholder's Compensation for Discontinuing Fishing with Gill and Trammel Nets*]

SEC. 7. (a) Within 90 days after the effective date of this section, every person who intends to seek the compensation provided in subdivision

(b) shall notify the Department of Fish and Game, on forms provided by the department, of that intent. Any person who does not submit the form within that 90-day period shall not be compensated pursuant to subdivision (b). The department shall publish a list of all persons submitting the form within 120 days after the effective date of this section.

(b) After July 1, 1993, and before January 1, 1994, any person who holds a permit issued pursuant to Section 5 and operates in the zone may surrender that permit to the department and agree to permanently discontinue fishing with gill or trammel nets in the zone, for which he or she shall receive, beginning on July 1, 1993, a one time compensation which shall be based upon the average annual ex vessel value of the fish other than any species of rockfish landed by a fisherman, which were taken pursuant to a valid general gill net or trammel net permit issued pursuant to Sections 8681 and 8682 of the Fish and Game Code within the zone during the years 1983 to 1987, inclusive. The department shall verify those landings by reviewing logs and landing receipts submitted to it. Any person who is denied compensation by the department as a result of the department's failure to verify landings may appeal that decision to the Fish and Game Commission.

(c) The State Board of Control shall, prior to the disbursement of any funds, verify the eligibility of each person seeking compensation and the amount of the compensation to be provided in order to ensure compliance with this section.

(d) Unless the Legislature enacts any required enabling legislation to implement this section on or before July 1, 1993, no compensation shall be paid under this article. [*New section adopted November 6, 1990. Initiative measure.*]

[*Marine Resources Protection Account—Fees—Interest*]

SEC. 8. (a) There is hereby created the Marine Resources Protection Account in the Fish and Game Preservation Fund. On and after January 1, 1991, the Department of Fish and Game shall collect any and all fees required by this article. All fees received by the department pursuant to this article shall be deposited in the account and shall be expended or encumbered to compensate persons who surrender permits pursuant to Section 7 or to provide for administration of this article. All funds received by the department during any fiscal year pursuant to this article which are not expended during that fiscal year to compensate persons as set forth in Section 7 or to provide for administration of this article shall be carried over into the following fiscal year and shall be used only for those purposes. All interest accrued from the department's retention of fees received pursuant to this article shall be credited to the account. The accrued interest may only be expended for the purposes authorized by this article. The account shall continue in existence, and the requirement to pay fees under this ar-

ticle shall remain in effect, until the compensation provided in Section 7 has been fully funded or until January 1, 1995, whichever occurs first.

(b) An amount, not to exceed 15 percent of the total annual revenues deposited in the account excluding any interest accrued or any funds carried over from a prior fiscal year may be expended for the administration of this article.

(c) In addition to a valid California sportfishing license issued pursuant to Sections 7149, 7149.1 or 7149.2 of the Fish and Game Code and any applicable sport license stamp issued pursuant to the Fish and Game Code, a person taking fish from ocean waters south of a line extending due west from Point Arguello for sport purposes shall have permanently affixed to that person's sportfishing license a marine resources protection stamp which may be obtained from the department upon payment of a fee of three dollars ($3). This subdivision does not apply to any one-day fishing license.

(d) In addition to a valid California commercial passenger fishing boat license required by Section 7920 of the Fish and Game Code, the owner of any boat or vessel who, for profit, permits any person to fish from the boat or vessel in ocean waters south of a line extending due west from Point Arguello, shall obtain and permanently affix to the license a commercial marine resources protection stamp which may be obtained from the department upon payment of a fee of three dollars ($3).

(e) The department may accept contributions or donations from any person who wishes to donate money to be used for the compensation of commercial gill net and trammel net fishermen who surrender permits under this article.

(f) This section shall become inoperative on January 1, 1995. [*New section adopted November 6, 1990. Inoperative January 1, 1995. Initiative measure.*]

[*Marine Resources Protection Account—Grants*]

SEC. 9. Any funds remaining in the Marine Resources Protection Account in the Fish and Game Preservation Fund on or after January 1, 1995, shall, with the approval of the Fish and Game Commission, be used to provide grants to colleges, universities and other bonafide scientific research groups to fund marine resource related scientific research within the ecological reserves established by Section 14 of this act. [*New section adopted November 6, 1990. Initiative measure.*]

[*Report to Legislature*]

SEC. 10. On or before December 31 of each year, the Director of Fish and Game shall prepare and submit a report to the Legislature regarding the implementation of this article including an accounting of all funds. [*New section adopted November 6, 1990. Initiative measure.*]

[*Violations*]

SEC. 11. It is unlawful for any person to take, possess, receive, transport, purchase, sell, barter, or process any fish obtained in violation of this article. [*New section adopted November 6, 1990. Initiative measure.*]

[*Commercial Fishing Daily Landings Monitoring and Evaluating Program*]

SEC. 12. To increase the State's scientific and biological information on the ocean fisheries of this State, the Department of Fish and Game shall establish a program whereby it can monitor and evaluate the daily landings of fish by commercial fishermen who are permitted under this article to take these fish. The cost of implementing this monitoring program shall be borne by the commercial fishing industry. [*New section adopted November 6, 1990. Initiative measure.*]

[*Penalties for Violations—Probation—Fine*]

SEC. 13. (a) The penalty for a first violation of the provisions of Sections 3 and 4 of this article is a fine of not less than one thousand dollars ($1,000) and not more than five thousand dollars ($5,000) and a mandatory suspension of any license, permit or stamp to take, receive, transport, purchase, sell, barter or process fish for commercial purposes for six months. The penalty for a second or subsequent violation of the provisions of Sections 3 and 4 of this article is a fine of not less than two thousand five hundred dollars ($2,500) and not more than ten thousand dollars ($10,000) and a mandatory suspension of any license, permit or stamp to take, receive, transport, purchase, sell, barter, or process fish for commercial purposes for one year.

(b) Notwithstanding any other provisions of law, a violation of Section 8 of this article shall be deemed a violation of the provisions of Section 7145 of the Fish and Game Code and the penalty for such violation shall be consistent with the provisions of Section 12002.2 of said code.

(c) If a person convicted of a violation of Section 3, 4, or 8 of this article is granted probation, the court shall impose as a term or condition of probation, in addition to any other term or condition of probation, that the person pay at least the minimum fine prescribed in this section. [*New section adopted November 6, 1990. Initiative measure.*]

[*New Ecological Reserves*]

SEC. 14. Prior to January 1, 1994, the Fish and Game Commission shall establish four new ecological reserves in ocean waters along the mainland coast. Each ecological reserve shall have a surface area of at least two square miles. The commission shall restrict the use of these ecological reserves to scientific research relating to the management and enhancement of marine resources. [*New section adopted November 6, 1990. Initiative measure.*]

[*Article not Preempting or Superseding Other Protective Closures*]

SEC. 15. This article does not preempt or supersede any other closures to protect any other wildlife, including sea otters, whales, and shorebirds. [*New section adopted November 6, 1990. Initiative measure.*]

[*Severability*]

SEC. 16. If any provision of this article or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable. [*New section adopted November 6, 1990. Initiative measure.*]

ARTICLE XI. [*Repealed June 2, 1970. See Article XI, below.*]

ARTICLE XI*

LOCAL GOVERNMENT

[*Counties—Formation, Boundaries, County Seat, Officers, and Governing Body*]

SEC. 1. (a) The State is divided into counties which are legal subdivisions of the State. The Legislature shall prescribe uniform procedure for county formation, consolidation, and boundary change. Formation or consolidation requires approval by a majority of electors voting on the question in each affected county. A boundary change requires approval by the governing body of each affected county. No county seat shall be removed unless two-thirds of the qualified electors of the county, voting on the proposition at a general election, shall vote in favor of such removal. A proposition of removal shall not be submitted in the same county more than once in four years.

(b) The Legislature shall provide for county powers, an elected county sheriff, an elected district attorney, an elected assessor, and an elected governing body in each county. Except as provided in subdivision (b) of Section 4 of this article, each governing body shall prescribe by ordinance the compensation of its members, but the ordinance prescribing such compensation shall be subject to referendum. The Legislature or the governing body may provide for other officers whose compensation shall be prescribed by the governing body. The governing body shall provide for the number, compensation, tenure, and appointment of employees. [*As amended June 7, 1988.*]

SEC. 2. [*Repealed June 2, 1970. See Section 2, below.*]

* New Article XI adopted June 2, 1970.

[*Cities—Formation, Powers*]

SEC. 2. (a) The Legislature shall prescribe uniform procedure for city formation and provide for city powers.

(b) Except with approval by a majority of its electors voting on the question, a city may not be annexed to or consolidated into another. [*New section adopted June 2, 1970.*]

[*County or City—Charters*]

SEC. 3. (a) For its own government, a county or city may adopt a charter by majority vote of its electors voting on the question. The charter is effective when filed with the Secretary of State. A charter may be amended, revised, or repealed in the same manner. A charter, amendment, revision, or repeal thereof shall be published in the official state statutes. County charters adopted pursuant to this section shall supersede any existing charter and all laws inconsistent therewith. The provisions of a charter are the law of the State and have the force and effect of legislative enactments.

(b) The governing body or charter commission of a county or city may propose a charter or revision. Amendment or repeal may be proposed by initiative or by the governing body.

(c) An election to determine whether to draft or revise a charter and elect a charter commission may be required by initiative or by the governing body.

(d) If provisions of 2 or more measures approved at the same election conflict, those of the measure receiving the highest affirmative vote shall prevail. [*As amended November 5, 1974.*]

[*County Charters—Provisions*]

SEC. 4. County charters shall provide for:

(a) A governing body of 5 or more members, elected (1) by district or, (2) at large, or (3) at large, with a requirement that they reside in a district. Charter counties are subject to statutes that relate to apportioning population of governing body districts.

(b) The compensation, terms, and removal of members of the governing body. If a county charter provides for the Legislature to prescribe the salary of the governing body, such compensation shall be prescribed by the governing body by ordinance.

(c) An elected sheriff, an elected district attorney, an elected assessor, other officers, their election or appointment, compensation, terms and removal.

(d) The performance of functions required by statute.

(e) The powers and duties of governing bodies and all other county officers, and for consolidation and segregation of county officers, and for the manner of filling all vacancies occurring therein.

(f) The fixing and regulation by governing bodies, by ordinance, of the appointment and number of assistants, deputies, clerks, attachés, and other persons to be employed, and for the prescribing and regulating by such bodies of the powers, duties, qualifications, and compensation of such persons, the times at which, and terms for which they shall be appointed, and the manner of their appointment and removal.

(g) Whenever any county has framed and adopted a charter, and the same shall have been approved by the Legislature as herein provided, the general laws adopted by the Legislature in pursuance of Section 1(b) of this article, shall, as to such county, be superseded by said charter as to matters for which, under this section it is competent to make provision in such charter, and for which provision is made therein, except as herein otherwise expressly provided.

(h) Charter counties shall have all the powers that are provided by this Constitution or by statute for counties. [*As amended June 7, 1988.*]

SEC. 5. [*Repealed June 2, 1970. See Section 5, below.*]

[*City Charters—Provisions*]

SEC. 5. (a) It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. City charters adopted pursuant to this Constitution shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith.

(b) It shall be competent in all city charters to provide, in addition to those provisions allowable by this Constitution, and by the laws of the State for: (1) the constitution, regulation, and government of the city police force (2) subgovernment in all or part of a city (3) conduct of city elections and (4) plenary authority is hereby granted, subject only to the restrictions of this article, to provide therein or by amendment thereto, the manner in which, the method by which, the times at which, and the terms for which the several municipal officers and employees whose compensation is paid by the city shall be elected or appointed, and for their removal, and for their compensation, and for the number of deputies, clerks and other employees that each shall have, and for the compensation, method of appointment, qualifications, tenure of office and removal of such deputies, clerks and other employees. [*New section adopted June 2, 1970.*]

SEC. 5.1. [*Repealed June 2, 1970.*]

SEC. 6. [*Repealed June 2, 1970. See Section 6, below.*]

[*Charter City and County*]

SEC. 6. (a) A county and all cities within it may consolidate as a charter city and county as provided by statute.

(b) A charter city and county is a charter city and a charter county. Its charter city powers supersede conflicting charter county powers. [*New section adopted June 2, 1970.*]

SEC. 7. [*Repealed June 2, 1970. See Section 7, below.*]

[*Local Ordinances and Regulations*]

SEC. 7. A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws. [*New section adopted June 2, 1970.*]

SEC. 7½. [*Repealed June 2, 1970.*]

SEC. 7½b. [*Repealed June 2, 1970.*]

[*Ballot Measures—Application*]

SEC. 7.5. (a) A city or county measure proposed by the legislative body of a city, charter city, county, or charter county and submitted to the voters for approval may not do either of the following:

(1) Include or exclude any part of the city, charter city, county, or charter county from the application or effect of its provisions based upon approval or disapproval of the city or county measure, or based upon the casting of a specified percentage of votes in favor of the measure, by the electors of the city, charter city, county, charter county, or any part thereof.

(2) Contain alternative or cumulative provisions wherein one or more of those provisions would become law depending upon the casting of a specified percentage of votes for or against the measure.

(b) "City or county measure," as used in this section, means an advisory question, proposed charter or charter amendment, ordinance, proposition for the issuance of bonds, or other question or proposition submitted to the voters of a city, or to the voters of a county at an election held throughout an entire single county. [*New section adopted June 2, 1998.*]

SEC. 8. [*Repealed June 2, 1970. See Section 8, below.*]

[*Counties—Performance of Municipal Functions*]

SEC. 8. (a) The Legislature may provide that counties perform municipal functions at the request of cities within them.

(b) If provided by their respective charters, a county may agree with a city within it to assume and discharge specified municipal functions. [*New section adopted June 2, 1970.*]

SEC. 8½. [*Repealed June 2, 1970.*]

[*Local Utilities*]

SEC. 9. (a) A municipal corporation may establish, purchase, and operate public works to furnish its inhabitants with light, water, power, heat, transportation, or means of communication. It may furnish those services outside its boundaries, except within another municipal corporation which furnishes the same service and does not consent.

(b) Persons or corporations may establish and operate works for supplying those services upon conditions and under regulations that the city may prescribe under its organic law. [*New section adopted June 2, 1970.*]

[*Local Government—Extra Compensation; City, County or District Employees—Residency*]

SEC. 10. (a) A local government body may not grant extra compensation or extra allowance to a public officer, public employee, or contractor after service has been rendered or a contract has been entered into and performed in whole or in part, or pay a claim under an agreement made without authority of law.

(b) A city or county, including any chartered city or chartered county, or public district, may not require that its employees be residents of such city, county, or district; except that such employees may be required to reside within a reasonable and specific distance of their place of employment or other designated location. [*As amended June 8, 1976.*]

SEC. 10.5. [*Repealed June 8, 1976.*]

[*Private Control of County or Municipal Functions—Deposit and Investment of Public Moneys*]

SEC. 11. (a) The Legislature may not delegate to a private person or body power to make, control, appropriate, supervise, or interfere with county or municipal corporation improvements, money, or property, or to levy taxes or assessments, or perform municipal functions.

(b) The Legislature may, however, provide for the deposit of public moneys in any bank in this State or in any savings and loan association in this State or any credit union in this State or in any federally insured industrial loan company in this State and for payment of interest, principal, and redemption premiums of public bonds and other evidence of public indebtedness by banks within or without this State. It may also provide for investment of public moneys in securities and the registration of bonds and other evidences of indebtedness by private persons or bodies, within or without this State, acting as trustees or fiscal agents. [*As amended November 8, 1988.*]

SEC. 12. [*As amended June 27, 1933, added to Article XIII as Section 37, June 2, 1970. See Section 12, below.*]

[*Claims Against Counties or Cities, Etc.*]

SEC. 12. The Legislature may prescribe procedure for presentation, consideration, and enforcement of claims against counties, cities, their officers, agents, or employees. [*New section adopted June 2, 1970.*]

SEC. 13. [*Repealed June 2, 1970. See Section 13, below.*]

[*Distribution of Powers—Construction of Article*]

SEC. 13. The provisions of Sections 1(b) (except for the second sentence), 3(a), 4, and 5 of this Article relating to matters affecting the distribution of powers between the Legislature and cities and counties, including matters affecting supersession, shall be construed as a restatement of all related provisions of the Constitution in effect immediately prior to the effective date of this amendment, and as making no substantive change.

The terms general law, general laws, and laws, as used in this Article, shall be construed as a continuation and restatement of those terms as used in the Constitution in effect immediately prior to the effective date of this amendment, and not as effecting a change in meaning. [*New section adopted June 2, 1970.*]

SEC. 13½. [*As amended November 3, 1914, added to Article XIII as Section 37.5, June 2, 1970.*]

[*Local Government—Taxation*]

SEC. 14. A local government formed after the effective date of this section, the boundaries of which include all or part of two or more counties, shall not levy a property tax unless such tax has been approved by a majority vote of the qualified voters of that local government voting on the issue of the tax. [*New section adopted November 2, 1976.*]

[*Vehicle License Fee Allocations*]

SEC. 15. (a) All revenues from taxes imposed pursuant to the Vehicle License Fee Law, or its successor, other than fees on trailer coaches and mobilehomes, over and above the costs of collection and any refunds authorized by law, shall be allocated to counties and cities according to statute.

(b) This section shall apply to those taxes imposed pursuant to that law on and after July 1 following the approval of this section by the voters. [*New section adopted June 3, 1986.*]

SEC. 16. [*Added to Article XIII as Section 38, June 2, 1970.*]

SEC. 16½. [*As amended November 8, 1932, added to Article XIII as Section 39, June 2, 1970.*]

SEC. 17. [*Repealed June 2, 1970.*]

SEC. 18. [*As amended November 8, 1949, added to Article XIII as Section 40, June 2, 1970.*]

SEC. 18¼. [*Repealed June 2, 1970.*]

SEC. 19. [*Repealed June 2, 1970.*]

SEC. 20. [*Repealed June 2, 1970.*]

ARTICLE XII. [*Repealed November 5, 1974. See Article XII, below.*]

ARTICLE XII*

PUBLIC UTILITIES

[*Public Utilities Commission—Composition*]

SECTION 1. The Public Utilities Commission consists of 5 members appointed by the Governor and approved by the Senate, a majority of the membership concurring, for staggered 6-year terms. A vacancy is filled for the remainder of the term. The Legislature may remove a member for incompetence, neglect of duty, or corruption, two thirds of the membership of each house concurring. [*New section adopted November 5, 1974.*]

[*Public Utilities Commission—Powers and Duties*]

SEC. 2. Subject to statute and due process, the commission may establish its own procedures. Any commissioner as designated by the commission may hold a hearing or investigation or issue an order subject to commission approval. [*New section adopted November 5, 1974.*]

[*Public Utilities—Legislative Control*]

SEC. 3. Private corporations and persons that own, operate, control, or manage a line, plant, or system for the transportation of people or property, the transmission of telephone and telegraph messages, or the production, generation, transmission, or furnishing of heat, light, water, power, storage, or wharfage directly or indirectly to or for the public, and common carriers, are public utilities subject to control by the Legislature. The Legislature may prescribe that additional classes of private corporations or other persons are public utilities. [*New section adopted November 5, 1974.*]

[*Rates—Discrimination in Transportation Charges, Etc.*]

SEC. 4. The commission may fix rates and establish rules for the transportation of passengers and property by transportation companies, prohibit discrimination, and award reparation for the exaction of unreasonable, excessive, or discriminatory charges. A transportation company

* New Article XII adopted November 5, 1974.

may not raise a rate or incidental charge except after a showing to and a decision by the commission that the increase is justified, and this decision shall not be subject to judicial review except as to whether confiscation of property will result. [*New section adopted November 5, 1974.*]

[*Public Utilities Commission—Compensation in Eminent Domain Proceedings*]

SEC. 5. The Legislature has plenary power, unlimited by the other provisions of this constitution but consistent with this article, to confer additional authority and jurisdiction upon the commission, to establish the manner and scope of review of commission action in a court of record, and to enable it to fix just compensation for utility property taken by eminent domain. [*New section adopted November 5, 1974.*]

[*Public Utilities Commission—Powers and Duties*]

SEC. 6. The commission may fix rates, establish rules, examine records, issue subpenas, administer oaths, take testimony, punish for contempt, and prescribe a uniform system of accounts for all public utilities subject to its jurisdiction. [*New section adopted November 5, 1974.*]

[*Free Passes, Public Officials—Conflict of Interest, Public Utilities Commissioner*]

SEC. 7. A transportation company may not grant free passes or discounts to anyone holding an office in this State; and the acceptance of a pass or discount by a public officer, other than a Public Utilities Commissioner, shall work a forfeiture of that office. A Public Utilities Commissioner may not hold an official relation to nor have a financial interest in a person or corporation subject to regulation by the commission. [*New section adopted November 5, 1974.*]

[*Public Utilities—Regulation*]

SEC. 8. A city, county, or other public body may not regulate matters over which the Legislature grants regulatory power to the Commission. This section does not affect power over public utilities relating to the making and enforcement of police, sanitary, and other regulations concerning municipal affairs pursuant to a city charter existing on October 10, 1911, unless that power has been revoked by the city's electors, or the right of any city to grant franchises for public utilities or other businesses on terms, conditions, and in the manner prescribed by law. [*New section adopted November 5, 1974.*]

[*Restatement*]

SEC. 9. The provisions of this article restate all related provisions of the Constitution in effect immediately prior to the effective date of this amendment and make no substantive change. [*New section adopted November 5, 1974.*]

SEC. 10. [*Repealed November 5, 1974.*]

SEC. 17. [*Repealed November 5, 1974.*]
SEC. 18. [*Repealed November 5, 1974.*]
SEC. 19. [*Repealed November 5, 1974.*]
SEC. 20. [*Repealed November 5, 1974.*]
SEC. 21. [*Repealed November 5, 1974.*]
SEC. 22. [*Repealed November 5, 1974.*]
SEC. 23. [*Repealed November 5, 1974.*]
SEC. 23a. [*Repealed November 5, 1974.*]

ARTICLE XIII. [*Repealed November 5, 1974. See Article XIII, below.*]

ARTICLE XIII*

TAXATION

SECTION 1. [*Repealed November 5, 1974. See Section 1, below.*]

[*Uniformity Clause*]

SEC. 1. Unless otherwise provided by this Constitution or the laws of the United States:

(a) All property is taxable and shall be assessed at the same percentage of fair market value. When a value standard other than fair market value is prescribed by this Constitution or by statute authorized by this Constitution, the same percentage shall be applied to determine the assessed value. The value to which the percentage is applied, whether it be the fair market value or not, shall be known for property tax purposes as the full value.

(b) All property so assessed shall be taxed in proportion to its full value. [*New section adopted November 5, 1974.*]

SEC. 1a. [*Repealed November 5, 1974.*]
SEC. 1b. [*Repealed November 5, 1974.*]
SEC. 1c. [*Repealed November 5, 1974.*]
SEC. 1d. [*Repealed November 5, 1974.*]
SEC. 1¼. [*Repealed November 5, 1974.*]
SEC. 1¼a. [*Repealed November 5, 1974.*]
SEC. 1¼b. [*Repealed November 5, 1974.*]
SEC. 1½. [*Repealed November 5, 1974.*]
SEC. 1½a. [*Repealed November 5, 1974.*]
SEC. 1.60. [*Repealed November 5, 1974.*]
SEC. 1.61. [*Repealed November 5, 1974.*]

* New Article XIII adopted November 5, 1974.

SEC. 1.62. [*Repealed November 5, 1974.*]

SEC. 1.63. [*Repealed November 5, 1974.*]

SEC. 1.64. [*Repealed November 5, 1974.*]

SEC. 1.65. [*Repealed November 5, 1974.*]

SEC. 1.66. [*Repealed November 5, 1974.*]

SEC. 1.67. [*Repealed November 5, 1974.*]

SEC. 1.68. [*Repealed November 5, 1974.*]

SEC. 1.69. [*Repealed November 5, 1974.*]

SEC. 1¾. [*Repealed November 5, 1974.*]

SEC. 2. [*Repealed November 5, 1974. See Section 2, below.*]

[*Personal Property Classification*]

SEC. 2. The Legislature may provide for property taxation of all forms of tangible personal property, shares of capital stock, evidences of indebtedness, and any legal or equitable interest therein not exempt under any other provision of this article. The Legislature, two-thirds of the membership of each house concurring, may classify such personal property for differential taxation or for exemption. The tax on any interest in notes, debentures, shares of capital stock, bonds, solvent credits, deeds of trust, or mortgages shall not exceed four-tenths of one percent of full value, and the tax per dollar of full value shall not be higher on personal property than on real property in the same taxing jurisdiction. [*New section adopted November 5, 1974.*]

SEC. 2.5. [*Repealed November 5, 1974.*]

SEC. 2.6. [*Repealed November 5, 1974.*]

SEC. 2.8. [*Repealed November 5, 1974.*]

[*Property Tax Exemptions*]

SEC. 3. The following are exempt from property taxation:

[*State Owned Property*]

(a) Property owned by the State.

[*Local Government Property*]

(b) Property owned by a local government, except as otherwise provided in Section 11(a).

[*Government Bonds*]

(c) Bonds issued by the State or a local government in the State.

[*Public Property*]

(d) Property used for libraries and museums that are free and open to the public and property used exclusively for public schools, community colleges, state colleges, and state universities.

[*Educational Property*]

(e) Buildings, land, equipment, and securities used exclusively for educational purposes by a nonprofit institution of higher education.

[*Church Property*]

(f) Buildings, land on which they are situated, and equipment used exclusively for religious worship.

[*Cemetery Property*]

(g) Property used or held exclusively for the permanent deposit of human dead or for the care and maintenance of the property or the dead, except when used or held for profit. This property is also exempt from special assessment.

[*Growing Crops*]

(h) Growing crops.

[*Fruit and Nut Trees*]

(i) Fruit and nut trees until 4 years after the season in which they were planted in orchard form and grape vines until 3 years after the season in which they were planted in vineyard form.

[*Timber Exemption*]

(j) Immature forest trees planted on lands not previously bearing merchantable timber or planted or of natural growth on lands from which the merchantable original growth timber stand to the extent of 70 percent of all trees over 16 inches in diameter has been removed. Forest trees or timber shall be considered mature at such time after 40 years from the time of planting or removal of the original timber when so declared by a majority vote of a board consisting of a representative from the State Board of Forestry, a representative from the State Board of Equalization, and the assessor of the county in which the trees are located.

The Legislature may supersede the foregoing provisions with an alternative system or systems of taxing or exempting forest trees or timber, including a taxation system not based on property valuation. Any alternative system or systems shall provide for exemption of unharvested immature trees, shall encourage the continued use of timberlands for the production of trees for timber products, and shall provide for restricting the use of timberland to the production of timber products and compatible uses with

provisions for taxation of timberland based on the restrictions. Nothing in this paragraph shall be construed to exclude timberland from the provisions of Section 8 of this article.

[*Homeowners' Exemption*]

(k) $7,000 of the full value of a dwelling, as defined by the Legislature, when occupied by an owner as his principal residence, unless the dwelling is receiving another real property exemption. The Legislature may increase this exemption and may deny it if the owner received state or local aid to pay taxes either in whole or in part, and either directly or indirectly, on the dwelling.

No increase in this exemption above the amount of $7,000 shall be effective for any fiscal year unless the Legislature increases the rate of state taxes in an amount sufficient to provide the subventions required by Section 25.

If the Legislature increases the homeowners' property tax exemption, it shall provide increases in benefits to qualified renters, as defined by law, comparable to the average increase in benefits to homeowners, as calculated by the Legislature.

[*Vessels*]

(*l*) Vessels of more than 50 tons burden in this State and engaged in the transportation of freight or passengers.

[*Household Furnishings—Personal Effects*]

(m) Household furnishings and personal effects not held or used in connection with a trade, profession, or business.

[*Debt Secured by Land*]

(n) Any debt secured by land.

[*Veterans' Exemptions*]

(o) Property in the amount of $1,000 of a claimant who—

(1) is serving in or has served in and has been discharged under honorable conditions from service in the United States Army, Navy, Air Force, Marine Corps, Coast Guard, or Revenue Marine (Revenue Cutter) Service; and—

(2) served either

(i) in time of war, or

(ii) in time of peace in a campaign or expedition for which a medal has been issued by Congress, or

(iii) in time of peace and because of a service-connected disability was released from active duty; and—

(3) resides in the State on the current lien date.

An unmarried person who owns property valued at $5,000 or more, or a married person, who, together with the spouse, owns property valued at $10,000 or more, is ineligible for this exemption.

If the claimant is married and does not own property eligible for the full amount of the exemption, property of the spouse shall be eligible for the unused balance of the exemption.

[*Veterans' Exemptions*]

(p) Property in the amount of $1,000 of a claimant who—

(1) is the unmarried spouse of a deceased veteran who met the service requirement stated in paragraphs (1) and (2) of subsection 3(o), and

(2) does not own property in excess of $10,000, and

(3) is a resident of the State on the current lien date.

[*Veterans' Exemptions*]

(q) Property in the amount of $1,000 of a claimant who—

(1) is the parent of a deceased veteran who met the service requirement stated in paragraphs (1) and (2) of subsection 3(o), and

(2) receives a pension because of the veteran's service, and

(3) is a resident of the State on the current lien date.

Either parent of a deceased veteran may claim this exemption.

An unmarried person who owns property valued at $5,000 or more, or a married person, who, together with the spouse, owns property valued at $10,000 or more, is ineligible for this exemption.

[*Veterans' Exemptions*]

(r) No individual residing in the State on the effective date of this amendment who would have been eligible for the exemption provided by the previous section 1¼ of this article had it not been repealed shall lose eligibility for the exemption as a result of this amendment. [*As amended November 8, 1988.*]

[*Veterans' Exemptions—Change in Assessment Ratio—Adjustment*]

SEC. 3.5. In any year in which the assessment ratio is changed, the Legislature shall adjust the valuation of assessable property described in subdivisions (o), (p) and (q) of Section 3 of this article to maintain the same proportionate values of such property. [*New section adopted November 6, 1979.*]

[*Property Tax Exemption*]

SEC. 4. The Legislature may exempt from property taxation in whole or in part:

[*Home of Veteran or Surviving Spouse*]

(a) The home of a person or a person's spouse, including an unmarried surviving spouse, if the person, because of injury incurred in military service, is blind in both eyes, has lost the use of 2 or more limbs, or is totally disabled, or if the person has, as a result of a service-connected injury or disease, died while on active duty in military service, unless the home is receiving another real property exemption.

[*Religious, Hospital and Charitable Property*]

(b) Property used exclusively for religious, hospital, or charitable purposes and owned or held in trust by corporations or other entities (1) that are organized and operating for those purposes, (2) that are nonprofit, and (3) no part of whose net earnings inures to the benefit of any private shareholder or individual.

[*Specific College Exemptions*]

(c) Property owned by the California School of Mechanical Arts, California Academy of Sciences, or Cogswell Polytechnical College, or held in trust for the Huntington Library and Art Gallery, or their successors.

[*Church Parking Lots*]

(d) Real property not used for commercial purposes that is reasonably and necessarily required for parking vehicles of persons worshipping on land exempt by Section 3(f). [*As amended November 3, 1992.*]

[*Exemption of Buildings Under Construction*]

SEC. 5. Exemptions granted or authorized by Sections 3(e), 3(f), and 4(b) apply to buildings under construction, land required for their convenient use, and equipment in them if the intended use would qualify the property for exemption. [*New section adopted November 5, 1974.*]

SEC. 6. [*Repealed November 5, 1974. See Section 6, below.*]

[*Exemption Waivers*]

SEC. 6. The failure in any year to claim, in a manner required by the laws in effect at the time the claim is required to be made, an exemption or classification which reduces a property tax shall be deemed a waiver of the exemption or classification for that year. [*New section adopted November 5, 1974.*]

SEC. 7. [*Repealed November 5, 1974. See Section 7, below.*]

[*Real Property Taxes—Exemption by County Boards of Supervisors*]

SEC. 7. The Legislature, two-thirds of the membership of each house concurring, may authorize county boards of supervisors to exempt real property having a full value so low that, if not exempt, the total taxes and applicable subventions on the property would amount to less than the cost of assessing and collecting them. [*New section adopted November 5, 1974.*]

[*Open Space Land and Historical Property—Exemption*]

SEC. 8. To promote the conservation, preservation and continued existence of open space lands, the Legislature may define open space land and shall provide that when this land is enforceably restricted, in a manner specified by the Legislature, to recreation, enjoyment of scenic beauty, use or conservation of natural resources, or production of food or fiber, it shall be valued for property tax purposes only on a basis that is consistent with its restrictions and uses.

To promote the preservation of property of historical significance, the Legislature may define such property and shall provide that when it is enforceably restricted, in a manner specified by the Legislature, it shall be valued for property tax purposes only on a basis that is consistent with its restrictions and uses. [*As amended June 8, 1976.*]

[*Postponement of Property Taxes*]

SEC. 8.5. The Legislature may provide by law for the manner in which a person of low or moderate income who is 62 years of age or older may postpone ad valorem property taxes on the dwelling owned and occupied by him or her as his or her principal place of residence. The Legislature may also provide by law for the manner in which a disabled person may postpone payment of ad valorem property taxes on the dwelling owned and occupied by him or her as his or her principal place of residence. The Legislature shall have plenary power to define all terms in this section.

The Legislature shall provide by law for subventions to counties, cities and counties, cities and districts in an amount equal to the amount of revenue lost by each by reason of the postponement of taxes and for the reimbursement to the State of subventions from the payment of postponed taxes. Provision shall be made for the inclusion of reimbursement for the payment of interest on, and any costs to the State incurred in connection with, the subventions. [*As amended November 6, 1984.*]

SEC. 9. [*Repealed November 5, 1974. See Section 9, below.*]

[*Valuation of Certain Homes*]

SEC. 9. The Legislature may provide for the assessment for taxation only on the basis of use of a single-family dwelling, as defined by the Leg-

islature, and so much of the land as is required for its convenient use and occupation, when the dwelling is occupied by an owner and located on land zoned exclusively for single-family dwellings or for agricultural purposes. [*New section adopted November 5, 1974.*]

SEC. 9a. [*Repealed November 5, 1974.*]

SEC. 9.5. [*Repealed November 5, 1974.*]

SEC. 10. [*Repealed November 5, 1974. See Section 10, below.*]

[*Golf Course Values*]

SEC. 10. Real property in a parcel of 10 or more acres which, on the lien date and for 2 or more years immediately preceding, has been used exclusively for nonprofit golf course purposes shall be assessed for taxation on the basis of such use, plus any value attributable to mines, quarries, hydrocarbon substances, or other minerals in the property or the right to extract hydrocarbons or other minerals from the property. [*New section adopted November 5, 1974.*]

SEC. 10½. [*Repealed November 5, 1974.*]

SEC. 11. [*Repealed November 5, 1974. See Section 11, below.*]

[*Taxation of Local Government Real Property*]

SEC. 11. (a) Lands owned by a local government that are outside its boundaries, including rights to use or divert water from surface or underground sources and any other interests in lands, are taxable if (1) they are located in Inyo or Mono County and (a) they were assessed for taxation to the local government in Inyo County as of the 1966 lien date, or in Mono County as of the 1967 lien date, whether or not the assessment was valid when made, or (b) they were acquired by the local government subsequent to that lien date and were assessed to a prior owner as of that lien date and each lien date thereafter, or (2) they are located outside Inyo or Mono County and were taxable when acquired by the local government. Improvements owned by a local government that are outside its boundaries are taxable if they were taxable when acquired or were constructed by the local government to replace improvements which were taxable when acquired.

(b) Taxable land belonging to a local government and located in Inyo County shall be assessed in any year subsequent to 1968 at the place where it was assessed as of the 1966 lien date and in an amount derived by multiplying its 1966 assessed value by the ratio of the statewide per capita assessed value of land as of the last lien date prior to the current lien date to $766, using civilian population only. Taxable land belonging to a local government and located in Mono County shall be assessed in any year subsequent to 1968 at the place where it was assessed as of the 1967 lien date and in an amount determined by the preceding formula except that the

1967 lien date, the 1967 assessed value, and the figure $856 shall be used in the formula. Taxable land belonging to a local government and located outside of Inyo and Mono counties shall be assessed at the place where located and in an amount that does not exceed the lower of (1) its fair market value times the prevailing percentage of fair market value at which other lands are assessed and (2) a figure derived in the manner specified in this Section for land located in Mono County.

If land acquired by a local government after the lien date of the base year specified in this Section was assessed in the base year as part of a larger parcel, the assessed value of the part in the base year shall be that fraction of the assessed value of the larger parcel that the area of the part is of the area of the larger parcel.

If a local government divests itself of ownership of land without water rights and this land was assessed in Inyo County as of the 1966 lien date or in Mono County as of the 1967 lien date, the divestment shall not diminish the quantity of water rights assessable and taxable at the place where assessed as of that lien date.

(c) In the event the Legislature changes the prevailing percentage of fair market value at which land is assessed for taxation, there shall be used in the computations required by Section 11(b) of this Article, for the first year for which the new percentage is applicable, in lieu of the statewide per capita assessed value of land as of the last lien date prior to the current lien date, the statewide per capita assessed value of land on the prior lien date times the ratio of the new prevailing percentage of fair market value to the previous prevailing percentage.

(d) If, after March 1954, a taxable improvement is replaced while owned by and in possession of a local government, the replacement improvement shall be assessed, as long as it is owned by a local government, as other improvements are except that the assessed value shall not exceed the product of (1) the percentage at which privately owned improvements are assessed times (2) the highest full value ever used for taxation of the improvement that has been replaced. For purposes of this calculation, the full value for any year prior to 1967 shall be conclusively presumed to be 4 times the assessed value in that year.

(e) No tax, charge, assessment, or levy of any character, other than those taxes authorized by Sections 11(a) to 11(d), inclusive, of this Article, shall be imposed upon one local government by another local government that is based or calculated upon the consumption or use of water outside the boundaries of the government imposing it.

(f) Any taxable interest of any character, other than a lease for agricultural purposes and an interest of a local government, in any land owned by a local government that is subject to taxation pursuant to Section 11(a) of this Article shall be taxed in the same manner as other taxable interests. The aggregate value of all the interests subject to taxation pursuant to Sec-

tion 11(a), however, shall not exceed the value of all interests in the land less the taxable value of the interest of any local government ascertained as provided in Sections 11(a) to 11(e), inclusive, of this Article.
(g) Any assessment made pursuant to Sections 11(a) to 11(d), inclusive, of this Article shall be subject to review, equalization, and adjustment by the State Board of Equalization, but an adjustment shall conform to the provisions of these Sections. [*New section adopted November 5, 1974.*]

[*Unsecured Property Tax Rate*]

SEC. 12. (a) Except as provided in subdivision (b), taxes on personal property, possessory interests in land, and taxable improvements located on land exempt from taxation which are not a lien upon land sufficient in value to secure their payment shall be levied at the rates for the preceding tax year upon property of the same kind where the taxes were a lien upon land sufficient in value to secure their payment.

(b) In any year in which the assessment ratio is changed, the Legislature shall adjust the rate described in subdivision (a) to maintain equality between property on the secured and unsecured rolls. [*As amended November 2, 1976.*]

SEC. 12¾. [*Repealed November 5, 1974.*]

SEC. 13. [*Repealed November 5, 1974. See Section 13, below.*]

[*Separate Land and Improvements Assessment*]

SEC. 13. Land and improvements shall be separately assessed. [*New section adopted November 5, 1974.*]

SEC. 14. [*Repealed November 5, 1974. See Section 14, below.*]

[*Tax Situs*]

SEC. 14. All property taxed by local government shall be assessed in the county, city, and district in which it is situated. [*New section adopted November 5, 1974.*]

SEC. 14⅘. [*Repealed November 5, 1974.*]

SEC. 15. [*Repealed November 5, 1974. See Section 15, below.*]

[*Disaster Relief*]

SEC. 15. The Legislature may authorize local government to provide for the assessment or reassessment of taxable property physically damaged or destroyed after the lien date to which the assessment or reassessment relates. [*New section adopted November 5, 1974.*]

SEC. 16. [*Repealed November 5, 1974. See Section 16, below.*]

[*County Board of Equalization—Assessment Appeals Board*]

SEC. 16. The county board of supervisors, or one or more assessment appeals boards created by the county board of supervisors, shall constitute

the county board of equalization for a county. Two or more county boards of supervisors may jointly create one or more assessment appeals boards which shall constitute the county board of equalization for each of the participating counties.

Except as provided in subdivision (g) of Section 11, the county board of equalization, under such rules of notice as the county board may prescribe, shall equalize the values of all property on the local assessment roll by adjusting individual assessments.

County boards of supervisors shall fix the compensation for members of assessment appeals boards, furnish clerical and other assistance for those boards, adopt rules of notice and procedures for those boards as may be required to facilitate their work and to insure uniformity in the processing and decision of equalization petitions, and may provide for their discontinuance.

The Legislature shall provide for: (a) the number and qualifications of members of assessment appeals boards, the manner of selecting, appointing, and removing them, and the terms for which they serve, and (b) the procedure by which two or more county boards of supervisors may jointly create one or more assessment appeals boards. [*New section adopted November 5, 1974.*]

[*Board of Equalization*]

SEC. 17. The Board of Equalization consists of 5 voting members: the Controller and 4 members elected for 4-year terms at gubernatorial elections. The State shall be divided into four Board of Equalization districts with the voters of each district electing one member. No member may serve more than 2 terms. [*As amended November 6, 1990. Initiative measure.*]

SEC. 18. [*Repealed November 5, 1974. See Section 18, below.*]

[*Intercounty Equalization*]

SEC. 18. The Board shall measure county assessment levels annually and shall bring those levels into conformity by adjusting entire secured local assessment rolls. In the event a property tax is levied by the State, however, the effects of unequalized local assessment levels, to the extent any remain after such adjustments, shall be corrected for purposes of distributing this tax by equalizing the assessment levels of locally and state-assessed properties and varying the rate of the state tax inversely with the counties' respective assessment levels. [*New section adopted November 5, 1974.*]

SEC. 19. [*Repealed November 5, 1974. See Section 19, below.*]

[*State Assessment*]

SEC. 19. The Board shall annually assess (1) pipelines, flumes, canals, ditches, and aqueducts lying within 2 or more counties and (2) property, except franchises, owned or used by regulated railway, telegraph, or telephone companies, car companies operating on railways in the State, and companies transmitting or selling gas or electricity. This property shall be subject to taxation to the same extent and in the same manner as other property.

No other tax or license charge may be imposed on these companies which differs from that imposed on mercantile, manufacturing, and other business corporations. This restriction does not release a utility company from payments agreed on or required by law for a special privilege or franchise granted by a government body.

The Legislature may authorize Board assessment of property owned or used by other public utilities.

The Board may delegate to a local assessor the duty to assess a property used but not owned by a state assessee on which the taxes are to be paid by a local assessee. [*New section adopted November 5, 1974.*]

SEC. 20. [*Repealed November 5, 1974. See Section 20, below.*]

[*Maximum Tax Rates—Bonding Limits*]

SEC. 20. The Legislature may provide maximum property tax rates and bonding limits for local governments. [*New section adopted November 5, 1974.*]

SEC. 21. [*Repealed November 5, 1974. See Section 21, below.*]

[*School District Tax*]

SEC. 21. Within such limits as may be provided under Section 20 of this Article, the Legislature shall provide for an annual levy by county governing bodies of school district taxes sufficient to produce annual revenues for each district that the district's board determines are required for its schools and district functions. [*New section adopted November 5, 1974.*]

SEC. 21.5. [*Repealed November 5, 1974.*]

SEC. 22. [*Repealed November 5, 1974. See Section 22, below.*]

[*State Property Tax Limitations*]

SEC. 22. Not more than 25 percent of the total appropriations from all funds of the State shall be raised by means of taxes on real and personal property according to the value thereof. [*New section adopted November 5, 1974.*]

SEC. 23. [*Repealed November 5, 1974. See Section 23, below.*]

[*State Boundary Change*]

SEC. 23. If state boundaries change, the Legislature shall determine how property affected shall be taxed. [*New section adopted November 5, 1974.*]

SEC. 24. [*Repealed November 5, 1974. See Section 24, below.*]

[*State Taxes for Local Purposes*]

SEC. 24. The Legislature may not impose taxes for local purposes but may authorize local governments to impose them.

[*State Funds for Local Purposes*]

Money appropriated from state funds to a local government for its local purposes may be used as provided by law.

[*Subventions*]

Money subvened to a local government under Section 25 may be used for state or local purposes. [*New section adopted November 5, 1974.*]

SEC. 25. [*Repealed November 5, 1974. See Section 25, below.*]

[*Homeowners' Exemption, Reimbursement of Local Government*]

SEC. 25. The Legislature shall provide, in the same fiscal year, reimbursements to each local government for revenue lost because of Section 3(k). [*New section adopted November 5, 1974.*]

SEC. 25.5. [*Repealed November 5, 1974.*]

[*Income Tax*]

SEC. 26. (a) Taxes on or measured by income may be imposed on persons, corporations, or other entities as prescribed by law.

(b) Interest on bonds issued by the State or a local government in the State is exempt from taxes on income.

(c) Income of a nonprofit educational institution of collegiate grade within the State of California is exempt from taxes on or measured by income if both of the following conditions are met:

(1) The income is not unrelated business income as defined by the Legislature.

(2) The income is used exclusively for educational purposes.

(d) A nonprofit organization that is exempted from taxation by Chapter 4 (commencing with Section 23701) of Part 11 of Division 2 of the Revenue and Taxation Code or Subchapter F (commencing with Section 501) of Chapter 1 of Subtitle A of the Internal Revenue Code of 1986, or the successor of either, is exempt from any business license tax or fee measured by income or gross receipts that is levied by a county or city, whether charter or general law, a city and county, a school district, a special district, or any other local agency. [*As amended June 7, 1994.*]

[*Bank and Corporation Taxes*]

SEC. 27. The Legislature, a majority of the membership of each house concurring, may tax corporations, including state and national banks, and their franchises by any method not prohibited by this Constitution or the Constitution or laws of the United States. Unless otherwise provided by the Legislature, the tax on state and national banks shall be according to or measured by their net income and shall be in lieu of all other taxes and license fees upon banks or their shares, except taxes upon real property and vehicle registration and license fees. [*As amended June 8, 1976.*]

[*Taxation of Insurance Companies*]

SEC. 28. (a) ''Insurer,'' as used in this section, includes insurance companies or associations and reciprocal or interinsurance exchanges together with their corporate or other attorneys in fact considered as a single unit, and the State Compensation Insurance Fund. As used in this paragraph, ''companies'' includes persons, partnerships, joint stock associations, companies and corporations.

(b) An annual tax is hereby imposed on each insurer doing business in this State on the base, at the rates, and subject to the deductions from the tax hereinafter specified.

(c) In the case of an insurer not transacting title insurance in this State, the ''basis of the annual tax'' is, in respect to each year, the amount of gross premiums, less return premiums, received in such year by such insurer upon its business done in this State, other than premiums received for reinsurance and for ocean marine insurance.

In the case of an insurer transacting title insurance in this State, the ''basis of the annual tax'' is, in respect to each year, all income upon business done in this State, except:

(1) Interest and dividends.

(2) Rents from real property.

(3) Profits from the sale or other disposition of investments.

(4) Income from investments.

''Investments'' as used in this subdivision includes property acquired by such insurer in the settlement or adjustment of claims against it but excludes investments in title plants and title records. Income derived directly or indirectly from the use of title plants and title records is included in the basis of the annual tax.

In the case of an insurer transacting title insurance in this State which has a trust department and does a trust business under the banking laws of this State, there shall be excluded from the basis of the annual tax imposed by this section, the income of, and from the assets of, such trust department and such trust business, if such income is taxed by this State or included in the measure of any tax imposed by this State.

(d) The rate of the tax to be applied to the basis of the annual tax in respect to each year is 2.35 percent.

(f) The tax imposed on insurers by this section is in lieu of all other taxes and licenses, state, county, and municipal, upon such insurers and their property, except:

(1) Taxes upon their real estate.

(2) That an insurer transacting title insurance in this State which has a trust department or does a trust business under the banking laws of this State is subject to taxation with respect to such trust department or trust business to the same extent and in the same manner as trust companies and the trust departments of banks doing business in this State.

(3) When by or pursuant to the laws of any other state or foreign country any taxes, licenses and other fees, in the aggregate, and any fines, penalties, deposit requirements or other material obligations, prohibitions or restrictions are or would be imposed upon California insurers, or upon the agents or representatives of such insurers, which are in excess of such taxes, licenses and other fees, in the aggregate, or which are in excess of the fines, penalties, deposit requirements or other obligations, prohibitions, or restrictions directly imposed upon similar insurers, or upon the agents or representatives of such insurers, of such other state or country under the statutes of this State; so long as such laws of such other state or country continue in force or are so applied, the same taxes, licenses and other fees, in the aggregate, or fines, penalties or deposit requirements or other material obligations, prohibitions, or restrictions, of whatever kind shall be imposed upon the insurers, or upon the agents or representatives of such insurers, of such other state or country doing business or seeking to do business in California. Any tax, license or other fee or other obligation imposed by any city, county, or other political subdivision or agency of such other state or country on California insurers or their agents or representatives shall be deemed to be imposed by such state or country within the meaning of this paragraph (3) of subdivision (f).

The provisions of this paragraph (3) of subdivision (f) shall not apply as to personal income taxes, nor as to ad valorem taxes on real or personal property nor as to special purpose obligations or assessments heretofore imposed by another state or foreign country in connection with particular kinds of insurance, other than property insurance; except that deductions, from premium taxes or other taxes otherwise payable, allowed on account of real estate or personal property taxes paid shall be taken into consideration in determining the propriety and extent of retaliatory action under this paragraph (3) of subdivision (f).

For the purposes of this paragraph (3) of subdivision (f) the domicile of an alien insurer, other than insurers formed under the laws of Canada, shall be that state in which is located its principal place of business in the United States.

In the case of an insurer formed under the laws of Canada or a province thereof, its domicile shall be deemed to be that province in which its head office is situated.

The provisions of this paragraph (3) of subdivision (f) shall also be applicable to reciprocals or interinsurance exchanges and fraternal benefit societies.

(4) The tax on ocean marine insurance.

(5) Motor vehicle and other vehicle registration license fees and any other tax or license fee imposed by the State upon vehicles, motor vehicles or the operation thereof.

(6) That each corporate or other attorney in fact of a reciprocal or interinsurance exchange shall be subject to all taxes imposed upon corporations or others doing business in the State, other than taxes on income derived from its principal business as attorney in fact.

A corporate or other attorney in fact of each exchange shall annually compute the amount of tax that would be payable by it under prevailing law except for the provisions of this section, and any management fee due from each exchange to its corporate or other attorney in fact shall be reduced pro tanto by a sum equivalent to the amount so computed.

(g) Every insurer transacting the business of ocean marine insurance in this State shall annually pay to the State a tax measured by that proportion of the underwriting profit of such insurer from such insurance written in the United States, which the gross premiums of the insurer from such insurance written in this State bear to the gross premiums of the insurer from such insurance written within the United States, at the rate of 5 per centum, which tax shall be in lieu of all other taxes and licenses, state, county and municipal, upon such insurer, except taxes upon real estate, and such other taxes as may be assessed or levied against such insurer on account of any other class of insurance written by it. The Legislature shall define the terms ''ocean marine insurance'' and ''underwriting profit,'' and shall provide for the assessment, levy, collection and enforcement of the ocean marine tax.

(h) The taxes provided for by this section shall be assessed by the State Board of Equalization.

(i) The Legislature, a majority of all the members elected to each of the two houses voting in favor thereof, may by law change the rate or rates of taxes herein imposed upon insurers.

(j) This section is not intended to and does not change the law as it has previously existed with respect to the meaning of the words ''gross premiums, less return premiums, received'' as used in this article. [*As amended June 8, 1976.*]

[*Local Government Tax Sharing*]

SEC. 29. (a) The Legislature may authorize counties, cities and counties, and cities to enter into contracts to apportion between them the revenue derived from any sales or use tax imposed by them that is collected for them by the State. Before the contract becomes operative, it shall be authorized by a majority of those voting on the question in each jurisdiction at a general or direct primary election.

(b) Notwithstanding subdivision (a), on and after the operative date of this subdivision, counties, cities and counties, and cities may enter into contracts to apportion between them the revenue derived from any sales or use tax imposed by them pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law, or any successor provisions, that is collected for them by the State, if the ordinance or resolution proposing each contract is approved by a two-thirds vote of the governing body of each jurisdiction that is a party to the contract. [*As amended November 3, 1998.*]

[*Tax Liens—Presumption of Payment of Taxes*]

SEC. 30. Every tax shall be conclusively presumed to have been paid after 30 years from the time it became a lien unless the property subject to the lien has been sold in the manner provided by the Legislature for the payment of the tax. [*New section adopted November 5, 1974.*]

[*Power to Tax*]

SEC. 31. The power to tax may not be surrendered or suspended by grant or contract. [*New section adopted November 5, 1974.*]

[*Proceedings Relating to Collection*]

SEC. 32. No legal or equitable process shall issue in any proceeding in any court against this State or any officer thereof to prevent or enjoin the collection of any tax. After payment of a tax claimed to be illegal, an action may be maintained to recover the tax paid, with interest, in such manner as may be provided by the Legislature. [*New section adopted November 5, 1974.*]

[*Legislature to Enact Laws*]

SEC. 33. The Legislature shall pass all laws necessary to carry out the provisions of this article. [*New section adopted November 5, 1974.*]

[*Food Products—Taxation*]

SEC. 34. Neither the State of California nor any of its political subdivisions shall levy or collect a sales or use tax on the sale of, or the storage, use or other consumption in this State of food products for human consumption except as provided by statute as of the effective date of this section. [*New section adopted November 3, 1992. Operative January 1, 1993. Initiative measure.*]

[*Local Public Safety Services*]

SEC. 35. (a) The people of the State of California find and declare all of the following:

(1) Public safety services are critically important to the security and well-being of the State's citizens and to the growth and revitalization of the State's economic base.

(2) The protection of the public safety is the first responsibility of local government and local officials have an obligation to give priority to the provision of adequate public safety services.

(3) In order to assist local government in maintaining a sufficient level of public safety services, the proceeds of the tax enacted pursuant to this section shall be designated exclusively for public safety.

(b) In addition to any sales and use taxes imposed by the Legislature, the following sales and use taxes are hereby imposed:

(1) For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers at the rate of ½ percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in this State on and after January 1, 1994.

(2) An excise tax is hereby imposed on the storage, use, or other consumption in this State of tangible personal property purchased from any retailer on and after January 1, 1994, for storage, use, or other consumption in this State at the rate of ½ percent of the sales price of the property.

(c) The Sales and Use Tax Law, including any amendments made thereto on or after the effective date of this section, shall be applicable to the taxes imposed by subdivision (b).

(d) (1) All revenues, less refunds, derived from the taxes imposed pursuant to subdivision (b) shall be transferred to the Local Public Safety Fund for allocation by the Legislature, as prescribed by statute, to counties in which either of the following occurs:

(A) The board of supervisors, by a majority vote of its membership, requests an allocation from the Local Public Safety Fund in a manner prescribed by statute.

(B) A majority of the county's voters voting thereon approve the addition of this section.

(2) Moneys in the Local Public Safety Fund shall be allocated for use exclusively for public safety services of local agencies.

(e) Revenues derived from the taxes imposed pursuant to subdivision (b) shall not be considered proceeds of taxes for purposes of Article XIII B or State General Fund proceeds of taxes within the meaning of Article XVI.

(f) Except for the provisions of Section 34, this section shall supersede any other provisions of this Constitution that are in conflict with the provisions of this section, including, but not limited to, Section 9 of Article II. [*New section adopted November 2, 1993.*]

SEC. 37. [*Repealed November 5, 1974.*]
SEC. 37.5. [*Repealed November 5, 1974.*]
SEC. 38. [*Repealed November 5, 1974.*]
SEC. 39. [*Repealed November 5, 1974.*]
SEC. 40. [*Repealed November 5, 1974.*]
SEC. 41. [*Repealed November 5, 1974.*]
SEC. 42. [*Repealed November 5, 1974.*]
SEC. 44. [*Repealed November 5, 1974.*]

ARTICLE XIII A*

[TAX LIMITATION]

[*Maximum Ad Valorem Tax on Real Property—Apportionment of Tax Revenues*]

SECTION 1. (a) The maximum amount of any ad valorem tax on real property shall not exceed One percent (1%) of the full cash value of such property. The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties.

[*Exceptions to Limitation*]

(b) The limitation provided for in subdivision (a) shall not apply to ad valorem taxes or special assessments to pay the interest and redemption charges on (1) any indebtedness approved by the voters prior to July 1, 1978, or (2) any bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the votes cast by the voters voting on the proposition. [*As amended June 3, 1986.*]

[*Valuation of Real Property—Appraised Value After 1975 Assessment—Replacement Dwelling*]

SEC. 2. (a) The ''full cash value'' means the county assessor's valuation of real property as shown on the 1975–76 tax bill under ''full cash value'' or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment. All real property not already assessed up to the 1975–76 full cash value may be reassessed to reflect that valuation. For purposes of this section, ''newly constructed'' does not include real property that is reconstructed after a disaster, as declared by the Governor, where the fair market value of the real property, as reconstructed, is comparable to its fair market value prior to the disaster. Also, the term ''newly constructed'' does not include the portion of reconstruction or improvement to a structure, con-

* New Article XIII A adopted June 6, 1978. Operative for tax year beginning July 1, 1979. Initiative measure.

structed of unreinforced masonry bearing wall construction, necessary to comply with any local ordinance relating to seismic safety during the first 15 years following that reconstruction or improvement.

However, the Legislature may provide that, under appropriate circumstances and pursuant to definitions and procedures established by the Legislature, any person over the age of 55 years who resides in property that is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII and any implementing legislation may transfer the base year value of the property entitled to exemption, with the adjustments authorized by subdivision (b), to any replacement dwelling of equal or lesser value located within the same county and purchased or newly constructed by that person as his or her principal residence within two years of the sale of the original property. For purposes of this section, ''any person over the age of 55 years'' includes a married couple one member of which is over the age of 55 years. For purposes of this section, ''replacement dwelling'' means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, and any land on which it may be situated. For purposes of this section, a two-dwelling unit shall be considered as two separate single-family dwellings. This paragraph shall apply to any replacement dwelling that was purchased or newly constructed on or after November 5, 1986.

In addition, the Legislature may authorize each county board of supervisors, after consultation with the local affected agencies within the county's boundaries, to adopt an ordinance making the provisions of this subdivision relating to transfer of base year value also applicable to situations in which the replacement dwellings are located in that county and the original properties are located in another county within this State. For purposes of this paragraph, ''local affected agency'' means any city, special district, school district, or community college district that receives an annual property tax revenue allocation. This paragraph shall apply to any replacement dwelling that was purchased or newly constructed on or after the date the county adopted the provisions of this subdivision relating to transfer of base year value, but shall not apply to any replacement dwelling that was purchased or newly constructed before November 9, 1988.

The Legislature may extend the provisions of this subdivision relating to the transfer of base year values from original properties to replacement dwellings of homeowners over the age of 55 years to severely disabled homeowners, but only with respect to those replacement dwellings purchased or newly constructed on or after the effective date of this paragraph.

[*Full Cash Value Reflecting Inflationary Rate*]

(b) The full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent for any given year or reduction as

shown in the consumer price index or comparable data for the area under taxing jurisdiction, or may be reduced to reflect substantial damage, destruction, or other factors causing a decline in value.

[*''Newly Constructed''*]

(c) For purposes of subdivision (a), the Legislature may provide that the term ''newly constructed'' does not include any of the following:

(1) The construction or addition of any active solar energy system.

(2) The construction or installation of any fire sprinkler system, other fire extinguishing system, fire detection system, or fire-related egress improvement, as defined by the Legislature, that is constructed or installed after the effective date of this paragraph.

(3) The construction, installation, or modification on or after the effective date of this paragraph of any portion or structural component of a single- or multiple-family dwelling that is eligible for the homeowner's exemption if the construction, installation, or modification is for the purpose of making the dwelling more accessible to a severely disabled person.

(4) The construction or installation of seismic retrofitting improvements or improvements utilizing earthquake hazard mitigation technologies, that are constructed or installed in existing buildings after the effective date of this paragraph. The Legislature shall define eligible improvements. This exclusion does not apply to seismic safety reconstruction or improvements that qualify for exclusion pursuant to the last sentence of the first paragraph of subdivision (a).

(5) The construction, installation, removal, or modification on or after the effective date of this paragraph of any portion or structural component of an existing building or structure if the construction, installation, removal, or modification is for the purpose of making the building more accessible to, or more usable by, a disabled person.

[*''Change in Ownership''*]

(d) For purposes of this section, the term ''change in ownership'' does not include the acquisition of real property as a replacement for comparable property if the person acquiring the real property has been displaced from the property replaced by eminent domain proceedings, by acquisition by a public entity, or governmental action that has resulted in a judgment of inverse condemnation. The real property acquired shall be deemed comparable to the property replaced if it is similar in size, utility, and function, or if it conforms to state regulations defined by the Legislature governing the relocation of persons displaced by governmental actions. The provisions of this subdivision shall be applied to any property acquired after March 1, 1975, but shall affect only those assessments of that property that occur after the provisions of this subdivision take effect.

[*Disasters—Replacement Property*]

(e) (1) Notwithstanding any other provision of this section, the Legislature shall provide that the base year value of property that is substantially damaged or destroyed by a disaster, as declared by the Governor, may be transferred to comparable property within the same county that is acquired or newly constructed as a replacement for the substantially damaged or destroyed property.

(2) Except as provided in paragraph (3), this subdivision shall apply to any comparable replacement property acquired or newly constructed on or after July 1, 1985, and to the determination of base year values for the 1985–86 fiscal year and fiscal years thereafter.

(3) In addition to the transfer of base year value of property within the same county that is permitted by paragraph (1), the Legislature may authorize each county board of supervisors to adopt, after consultation with affected local agencies within the county, an ordinance allowing the transfer of the base year value of property that is located within another county in the State and is substantially damaged or destroyed by a disaster, as declared by the Governor, to comparable replacement property of equal or lesser value that is located within the adopting county and is acquired or newly constructed within three years of the substantial damage or destruction of the original property as a replacement for that property. The scope and amount of the benefit provided to a property owner by the transfer of base year value of property pursuant to this paragraph shall not exceed the scope and amount of the benefit provided to a property owner by the transfer of base year value of property pursuant to subdivision (a). For purposes of this paragraph, ''affected local agency'' means any city, special district, school district, or community college district that receives an annual allocation of ad valorem property tax revenues. 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, as declared by the Governor, 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.

(f) For the purposes of subdivision (e):

(1) Property is substantially damaged or destroyed if it sustains physical damage amounting to more than 50 percent of its value immediately before the disaster. Damage includes a diminution in the value of property as a result of restricted access caused by the disaster.

(2) Replacement property is comparable to the property substantially damaged or destroyed if it is similar in size, utility, and function to the property that it replaces, and if the fair market value of the acquired property is comparable to the fair market value of the replaced property prior to the disaster.

[*Real Property Transfers between Spouses*]

(g) For purposes of subdivision (a), the terms ''purchased'' and ''change in ownership'' do not include the purchase or transfer of real property between spouses since March 1, 1975, including, but not limited to, all of the following:

(1) Transfers to a trustee for the beneficial use of a spouse, or the surviving spouse of a deceased transferor, or by a trustee of such a trust to the spouse of the trustor.

(2) Transfers to a spouse that take effect upon the death of a spouse.

(3) Transfers to a spouse or former spouse in connection with a property settlement agreement or decree of dissolution of a marriage or legal separation.

(4) The creation, transfer, or termination, solely between spouses, of any coowner's interest.

(5) The distribution of a legal entity's property to a spouse or former spouse in exchange for the interest of the spouse in the legal entity in connection with a property settlement agreement or a decree of dissolution of a marriage or legal separation.

[*Real Property Transfers between Family Members*]

(h) (1) For purposes of subdivision (a), the terms ''purchased'' and ''change in ownership'' do not include the purchase or transfer of the principal residence of the transferor in the case of a purchase or transfer between parents and their children, as defined by the Legislature, and the purchase or transfer of the first one million dollars ($1,000,000) of the full cash value of all other real property between parents and their children, as defined by the Legislature. This subdivision shall apply to both voluntary transfers and transfers resulting from a court order or judicial decree.

(2) (A) Subject to subparagraph (B), commencing with purchases or transfers that occur on or after the date upon which the measure adding this paragraph becomes effective, the exclusion established by paragraph (1) also applies to a purchase or transfer of real property between grandparents and their grandchild or grandchildren, as defined by the Legislature, that otherwise qualifies under paragraph (1), if all of the parents of that grandchild or those grandchildren, who qualify as the children of the grandparents, are deceased as of the date of the purchase or transfer.

(B) A purchase or transfer of a principal residence shall not be excluded pursuant to subparagraph (A) if the transferee grandchild or grandchildren also received a principal residence, or interest therein, through another purchase or transfer that was excludable pursuant to paragraph (1). The full cash value of any real property, other than a principal residence, that was transferred to the grandchild or grandchildren pursuant to a purchase or transfer that was excludable pursuant to paragraph (1), and the full cash value of a principal residence that fails to qualify for exclu-

sion as a result of the preceding sentence, shall be included in applying, for purposes of subparagraph (A), the one million dollar ($1,000,000) full cash value limit specified in paragraph (1).

[*Contaminated Property*]

(i) (1) Notwithstanding any other provision of this section, the Legislature shall provide with respect to a qualified contaminated property, as defined in paragraph (2), that either, but not both, of the following shall apply:

(A) (i) Subject to the limitation of clause (ii), the base year value of the qualified contaminated property, as adjusted as authorized by subdivision (b), may be transferred to a replacement property that is acquired or newly constructed as a replacement for the qualified contaminated property, if the replacement real property has a fair market value that is equal to or less than the fair market value of the qualified contaminated property if that property were not contaminated and, except as otherwise provided by this clause, is located within the same county. The base year value of the qualified contaminated property may be transferred to a replacement real property located within another county if the board of supervisors of that other county has, after consultation with the affected local agencies within that county, adopted a resolution authorizing an intercounty transfer of base year value as so described.

(ii) This subparagraph applies only to replacement property that is acquired or newly constructed within five years after ownership in the qualified contaminated property is sold or otherwise transferred.

(B) In the case in which the remediation of the environmental problems on the qualified contaminated property requires the destruction of, or results in substantial damage to, a structure located on that property, the term ''new construction'' does not include the repair of a substantially damaged structure, or the construction of a structure replacing a destroyed structure on the qualified contaminated property, performed after the remediation of the environmental problems on that property, provided that the repaired or replacement structure is similar in size, utility, and function to the original structure.

(2) For purposes of this subdivision, ''qualified contaminated property'' means residential or nonresidential real property that is all of the following:

(A) In the case of residential real property, rendered uninhabitable, and in the case of nonresidential real property, rendered unusable, as the result of either environmental problems, in the nature of and including, but not limited to, the presence of toxic or hazardous materials, or the remediation of those environmental problems, except where the existence of the environmental problems was known to the owner, or to a related individual or entity as described in paragraph (3), at the time the real property was ac-

quired or constructed. For purposes of this subparagraph, residential real property is ''uninhabitable'' if that property, as a result of health hazards caused by or associated with the environmental problems, is unfit for human habitation, and nonresidential real property is ''unusable'' if that property, as a result of health hazards caused by or associated with the environmental problems, is unhealthy and unsuitable for occupancy.

(B) Located on a site that has been designated as a toxic or environmental hazard or as an environmental cleanup site by an agency of the State of California or the federal government.

(C) Real property that contains a structure or structures thereon prior to the completion of environmental cleanup activities, and that structure or structures are substantially damaged or destroyed as a result of those environmental cleanup activities.

(D) Stipulated by the lead governmental agency, with respect to the environmental problems or environmental cleanup of the real property, not to have been rendered uninhabitable or unusable, as applicable, as described in subparagraph (A), by any act or omission in which an owner of that real property participated or acquiesced.

(3) It shall be rebuttably presumed that an owner of the real property participated or acquiesced in any act or omission that rendered the real property uninhabitable or unusable, as applicable, if that owner is related to any individual or entity that committed that act or omission in any of the following ways:

(A) Is a spouse, parent, child, grandparent, grandchild, or sibling of that individual.

(B) Is a corporate parent, subsidiary, or affiliate of that entity.

(C) Is an owner of, or has control of, that entity.

(D) Is owned or controlled by that entity.

If this presumption is not overcome, the owner shall not receive the relief provided for in subparagraph (A) or (B) of paragraph (1). The presumption may be overcome by presentation of satisfactory evidence to the assessor, who shall not be bound by the findings of the lead governmental agency in determining whether the presumption has been overcome.

(4) This subdivision applies only to replacement property that is acquired or constructed on or after January 1, 1995, and to property repairs performed on or after that date.

[*Effectiveness of Amendments*]

(j) Unless specifically provided otherwise, amendments to this section adopted prior to November 1, 1988, shall be effective for changes in ownership that occur, and new construction that is completed, after the effective date of the amendment. Unless specifically provided otherwise, amendments to this section adopted after November 1, 1988, shall be ef-

fective for changes in ownership that occur, and new construction that is completed, on or after the effective date of the amendment. [*As amended November 3, 1998.*]

[*Changes in State Taxes—Vote Requirement*]

SEC. 3. From and after the effective date of this article, any changes in state taxes enacted for the purpose of increasing revenues collected pursuant thereto whether by increased rates or changes in methods of computation must be imposed by an Act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature, except that no new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property may be imposed. [*New section adopted June 6, 1978. Initiative measure.*]

[*Imposition of Special Taxes*]

SEC. 4. Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district. [*New section adopted June 6, 1978. Operative for tax year beginning July 1, 1979. Initiative measure.*]

[*Effective Date of Article*]

SEC. 5. This article shall take effect for the tax year beginning on July 1 following the passage of this Amendment, except Section 3 which shall become effective upon the passage of this article. [*New section adopted June 6, 1978. Operative for tax year beginning July 1, 1979. Initiative measure.*]

[*Severability*]

SEC. 6. If any section, part, clause, or phrase hereof is for any reason held to be invalid or unconstitutional, the remaining sections shall not be affected but will remain in full force and effect. [*New section adopted June 6, 1978. Operative for tax year beginning July 1, 1979. Initiative measure.*]

[*California Children and Families First Act of 1998*]

SEC. 7. Section 3 of this article does not apply to the California Children and Families First Act of 1998. [*New section adopted November 3, 1998. Initiative measure.*]

ARTICLE XIII B*

GOVERNMENT SPENDING LIMITATION

[*Total Annual Appropriations*]

SEC. 1. The total annual appropriations subject to limitation of the State and of each local government shall not exceed the appropriations limit of the entity of government for the prior year adjusted for the change in the cost of living and the change in population, except as otherwise provided in this article. [*As amended June 5, 1990. Operative July 1, 1990.*]

[*Appropriations Limit Annual Calculation—Review*]

SEC. 1.5. The annual calculation of the appropriations limit under this article for each entity of local government shall be reviewed as part of an annual financial audit. [*New section adopted June 5, 1990. Operative July 1, 1990.*]

[*Revenues in Excess of Limitation*]

SEC. 2. (a)(1) Fifty percent of all revenues received by the State in a fiscal year and in the fiscal year immediately following it in excess of the amount which may be appropriated by the State in compliance with this article during that fiscal year and the fiscal year immediately following it shall be transferred and allocated, from a fund established for that purpose, pursuant to Section 8.5 of Article XVI.

(2) Fifty percent of all revenues received by the State in a fiscal year and in the fiscal year immediately following it in excess of the amount which may be appropriated by the State in compliance with this article during that fiscal year and the fiscal year immediately following it shall be returned by a revision of tax rates or fee schedules within the next two subsequent fiscal years.

(b) All revenues received by an entity of government, other than the State, in a fiscal year and in the fiscal year immediately following it in excess of the amount which may be appropriated by the entity in compliance with this article during that fiscal year and the fiscal year immediately following it shall be returned by a revision of tax rates or fee schedules within the next two subsequent fiscal years. [*As amended June 5, 1990. Operative July 1, 1990.*]

[*Appropriations Limit—Adjustments*]

SEC. 3. The appropriations limit for any fiscal year pursuant to Sec. 1 shall be adjusted as follows:

(a) In the event that the financial responsibility of providing services is transferred, in whole or in part, whether by annexation, incorporation or

* New Article XIII B adopted November 6, 1979. Operative commencing first day of fiscal year following adoption. Initiative measure.

otherwise, from one entity of government to another, then for the year in which such transfer becomes effective the appropriations limit of the transferee entity shall be increased by such reasonable amount as the said entities shall mutually agree and the appropriations limit of the transferor entity shall be decreased by the same amount.

(b) In the event that the financial responsibility of providing services is transferred, in whole or in part, from an entity of government to a private entity, or the financial source for the provision of services is transferred, in whole or in part, from other revenues of an entity of government, to regulatory licenses, user charges or user fees, then for the year of such transfer the appropriations limit of such entity of government shall be decreased accordingly.

(c) (1) In the event an emergency is declared by the legislative body of an entity of government, the appropriations limit of the affected entity of government may be exceeded provided that the appropriations limits in the following three years are reduced accordingly to prevent an aggregate increase in appropriations resulting from the emergency.

(2) In the event an emergency is declared by the Governor, appropriations approved by a two-thirds vote of the legislative body of an affected entity of government to an emergency account for expenditures relating to that emergency shall not constitute appropriations subject to limitation. As used in this paragraph, ''emergency'' means the existence, as declared by the Governor, of conditions of disaster or extreme peril to the safety of persons and property within the State, or parts thereof, caused by such conditions as attack or probable or imminent attack by an enemy of the United States, fire, flood, drought, storm, civil disorder, earthquake, or volcanic eruption. [*As amended June 5, 1990. Operative July 1, 1990.*]

[*Appropriations Limit—Establishment or Change*]

SEC. 4. The appropriations limit imposed on any new or existing entity of government by this Article may be established or changed by the electors of such entity, subject to and in conformity with constitutional and statutory voting requirements. The duration of any such change shall be as determined by said electors, but shall in no event exceed four years from the most recent vote of said electors creating or continuing such change. [*New section adopted November 6, 1979. Operative commencing first day of fiscal year following adoption. Initiative measure.*]

[*Contingency, Emergency, Unemployment, Etc., Funds—Contributions—Withdrawals—Transfers*]

SEC. 5. Each entity of government may establish such contingency, emergency, unemployment, reserve, retirement, sinking fund, trust, or similar funds as it shall deem reasonable and proper. Contributions to any such fund, to the extent that such contributions are derived from the pro-

ceeds of taxes, shall for purposes of this Article constitute appropriations subject to limitation in the year of contribution. Neither withdrawals from any such fund, nor expenditures of (or authorizations to expend) such withdrawals, nor transfers between or among such funds, shall for purposes of this Article constitute appropriations subject to limitation. [*New section adopted November 6, 1979. Operative commencing first day of fiscal year following adoption. Initiative measure.*]

[*Prudent State Reserve*]

SEC. 5.5. *Prudent State Reserve.* The Legislature shall establish a prudent state reserve fund in such amount as it shall deem reasonable and necessary. Contributions to, and withdrawals from, the fund shall be subject to the provisions of Section 5 of this Article. [*New section adopted November 8, 1988. Initiative measure.*]

[*Mandates of New Programs or Higher Levels of Service—State Subvention—Exceptions*]

SEC. 6. Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:

(a) Legislative mandates requested by the local agency affected;

(b) Legislation defining a new crime or changing an existing definition of a crime; or

(c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975. [*New section adopted November 6, 1979. Operative commencing first day of fiscal year following adoption. Initiative measure.*]

[*Bonded Indebtedness*]

SEC. 7. Nothing in this Article shall be construed to impair the ability of the State or of any local government to meet its obligations with respect to existing or future bonded indebtedness. [*New section adopted November 6, 1979. Operative commencing first day of fiscal year following adoption. Initiative measure.*]

[*Definitions*]

SEC. 8. As used in this article and except as otherwise expressly provided herein:

(a) ''Appropriations subject to limitation'' of the State means any authorization to expend during a fiscal year the proceeds of taxes levied by or for the State, exclusive of state subventions for the use and operation of local government (other than subventions made pursuant to Section 6) and further exclusive of refunds of taxes, benefit payments from retirement, unemployment insurance, and disability insurance funds.

(b) ''Appropriations subject to limitation'' of an entity of local government means any authorization to expend during a fiscal year the proceeds of taxes levied by or for that entity and the proceeds of state subventions to that entity (other than subventions made pursuant to Section 6) exclusive of refunds of taxes.

(c) ''Proceeds of taxes'' shall include, but not be restricted to, all tax revenues and the proceeds to an entity of government, from (1) regulatory licenses, user charges, and user fees to the extent that those proceeds exceed the costs reasonably borne by that entity in providing the regulation, product, or service, and (2) the investment of tax revenues. With respect to any local government, ''proceeds of taxes'' shall include subventions received from the State, other than pursuant to Section 6, and, with respect to the State, proceeds of taxes shall exclude such subventions.

(d) ''Local government'' means any city, county, city and county, school district, special district, authority, or other political subdivision of or within the State.

(e) (1) ''Change in the cost of living'' for the State, a school district, or a community college district means the percentage change in California per capita personal income from the preceding year.

(2) ''Change in the cost of living'' for an entity of local government, other than a school district or a community college district, shall be either (A) the percentage change in California per capita personal income from the preceding year, or (B) the percentage change in the local assessment roll from the preceding year for the jurisdiction due to the addition of local nonresidential new construction. Each entity of local government shall select its change in the cost of living pursuant to this paragraph annually by a recorded vote of the entity's governing body.

(f) ''Change in population'' of any entity of government, other than the State, a school district, or a community college district, shall be determined by a method prescribed by the Legislature.

''Change in population'' of a school district or a community college district shall be the percentage change in the average daily attendance of the school district or community college district from the preceding fiscal year, as determined by a method prescribed by the Legislature.

''Change in population'' of the State shall be determined by adding (1) the percentage change in the State's population multiplied by the percentage of the State's budget in the prior fiscal year that is expended for other than educational purposes for kindergarten and grades one to 12, inclusive, and the community colleges, and (2) the percentage change in the total statewide average daily attendance in kindergarten and grades one to 12, inclusive, and the community colleges, multiplied by the percentage of the State's budget in the prior fiscal year that is expended for educational purposes for kindergarten and grades one to 12, inclusive, and the community colleges.

Any determination of population pursuant to this subdivision, other than that measured by average daily attendance, shall be revised, as necessary, to reflect the periodic census conducted by the United States Department of Commerce, or successor department.

(g) ''Debt service'' means appropriations required to pay the cost of interest and redemption charges, including the funding of any reserve or sinking fund required in connection therewith, on indebtedness existing or legally authorized as of January 1, 1979, or on bonded indebtedness thereafter approved according to law by a vote of the electors of the issuing entity voting in an election for that purpose.

(h) The ''appropriations limit'' of each entity of government for each fiscal year is that amount which total annual appropriations subject to limitation may not exceed under Sections 1 and 3. However, the ''appropriations limit'' of each entity of government for fiscal year 1978–79 is the total of the appropriations subject to limitation of the entity for that fiscal year. For fiscal year 1978–79, state subventions to local governments, exclusive of federal grants, are deemed to have been derived from the proceeds of state taxes.

(i) Except as otherwise provided in Section 5, ''appropriations subject to limitation'' do not include local agency loan funds or indebtedness funds, investment (or authorizations to invest) funds of the State, or of an entity of local government in accounts at banks or savings and loan associations or in liquid securities. [*As amended June 5, 1990. Operative July 1, 1990.*]

[*Exceptions to Appropriations Subject to Limitation*]

SEC. 9. ''Appropriations subject to limitation'' for each entity of government do not include:

(a) Appropriations for debt service.

(b) Appropriations required to comply with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the provision of existing services more costly.

(c) Appropriations of any special district which existed on January 1, 1978, and which did not as of the 1977–78 fiscal year levy an ad valorem tax on property in excess of 12½ cents per $100 of assessed value; or the appropriations of any special district then existing or thereafter created by a vote of the people, which is totally funded by other than the proceeds of taxes.

(d) Appropriations for all qualified capital outlay projects, as defined by the Legislature.

(e) Appropriations of revenue which are derived from any of the following:

(1) That portion of the taxes imposed on motor vehicle fuels for use in motor vehicles upon public streets and highways at a rate of more than nine cents ($0.09) per gallon.

(2) Sales and use taxes collected on that increment of the tax specified in paragraph (1).

(3) That portion of the weight fee imposed on commercial vehicles which exceeds the weight fee imposed on those vehicles on January 1, 1990. [*As amended June 5, 1990. Operative July 1, 1990.*]

[*Effective Date of Article*]

SEC. 10. This Article shall be effective commencing with the first day of the fiscal year following its adoption. [*New section adopted November 6, 1979. Operative commencing first day of fiscal year following adoption. Initiative measure.*]

[*Appropriations Limit on or after July 1, 1990*]

SEC. 10.5. For fiscal years beginning on or after July 1, 1990, the appropriations limit of each entity of government shall be the appropriations limit for the 1986–87 fiscal year adjusted for the changes made from that fiscal year pursuant to this article, as amended by the measure adding this section, adjusted for the changes required by Section 3. [*New section adopted June 5, 1990. Operative July 1, 1990.*]

[*Category Added or Removed from Appropriations Subject to Limitation—Severability*]

SEC. 11. If any appropriation category shall be added to or removed from appropriations subject to limitation, pursuant to final judgment of any court of competent jurisdiction and any appeal therefrom, the appropriations limit shall be adjusted accordingly. If any section, part, clause or phrase in this Article is for any reason held invalid or unconstitutional, the remaining portions of this Article shall not be affected but shall remain in full force and effect. [*New section adopted November 6, 1979. Operative commencing first day of fiscal year following adoption. Initiative measure.*]

[*Exceptions to Appropriations Subject to Limitation*]

SEC. 12. ''Appropriations subject to limitation'' of each entity of government shall not include appropriations of revenue from the Cigarette and Tobacco Products Surtax Fund created by the Tobacco Tax and Health Protection Act of 1988. No adjustment in the appropriations limit of any entity of government shall be required pursuant to Section 3 as a result of revenue being deposited in or appropriated from the Cigarette and Tobacco Products Surtax Fund created by the Tobacco Tax and Health Protection Act of 1988. [*New section adopted November 8, 1988. Initiative measure.*]

[*Exceptions to Appropriations Subject to Limitation*]

SEC. 13. ''Appropriations subject to limitation'' of each entity of government shall not include appropriations of revenue from the California Children and Families First Trust Fund created by the California Children and Families First Act of 1998. No adjustment in the appropriations limit of any entity of government shall be required pursuant to Section 3 as a result of revenue being deposited in or appropriated from the California Children and Families First Trust Fund. The surtax created by the California Children and Families First Act of 1998 shall not be considered General Fund revenues for the purposes of Section 8 of Article XVI. [*New section adopted November 3, 1998. Initiative measure.*]

ARTICLE XIII C *

[VOTER APPROVAL FOR LOCAL TAX LEVIES]

SECTION 1. Definitions. As used in this article:

(a) ''General tax'' means any tax imposed for general governmental purposes.

(b) ''Local government'' means any county, city, city and county, including a charter city or county, any special district, or any other local or regional governmental entity.

(c) ''Special district'' means an agency of the State, formed pursuant to general law or a special act, for the local performance of governmental or proprietary functions with limited geographic boundaries including, but not limited to, school districts and redevelopment agencies.

(d) ''Special tax'' means any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund. [*New section adopted November 5, 1996. Initiative measure.*]

* New Article XIII C adopted November 5, 1996. Initiative measure.

SEC. 2. Local Government Tax Limitation. Notwithstanding any other provision of this Constitution:

(a) All taxes imposed by any local government shall be deemed to be either general taxes or special taxes. Special purpose districts or agencies, including school districts, shall have no power to levy general taxes.

(b) No local government may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote. A general tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved. The election required by this subdivision shall be consolidated with a regularly scheduled general election for members of the governing body of the local government, except in cases of emergency declared by a unanimous vote of the governing body.

(c) Any general tax imposed, extended, or increased, without voter approval, by any local government on or after January 1, 1995, and prior to the effective date of this article, shall continue to be imposed only if approved by a majority vote of the voters voting in an election on the issue of the imposition, which election shall be held within two years of the effective date of this article and in compliance with subdivision (b).

(d) No local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote. A special tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved. [*New section adopted November 5, 1996. Initiative measure.*]

SEC. 3. Initiative Power for Local Taxes, Assessments, Fees and Charges. Notwithstanding any other provision of this Constitution, including, but not limited to, Sections 8 and 9 of Article II, the initiative power shall not be prohibited or otherwise limited in matters of reducing or repealing any local tax, assessment, fee or charge. The power of initiative to affect local taxes, assessments, fees and charges shall be applicable to all local governments and neither the Legislature nor any local government charter shall impose a signature requirement higher than that applicable to statewide statutory initiatives. [*New section adopted November 5, 1996. Initiative measure.*]

ARTICLE XIII D*

[ASSESSMENT AND PROPERTY-RELATED FEE REFORM]

SECTION 1. Application. Notwithstanding any other provision of law, the provisions of this article shall apply to all assessments, fees and charges, whether imposed pursuant to state statute or local government charter authority. Nothing in this article or Article XIII C shall be construed to:

(a) Provide any new authority to any agency to impose a tax, assessment, fee, or charge.

(b) Affect existing laws relating to the imposition of fees or charges as a condition of property development.

(c) Affect existing laws relating to the imposition of timber yield taxes. [*New section adopted November 5, 1996. Initiative measure.*]

SEC. 2. Definitions. As used in this article:

(a) ''Agency'' means any local government as defined in subdivision (b) of Section 1 of Article XIII C.

(b) ''Assessment'' means any levy or charge upon real property by an agency for a special benefit conferred upon the real property. ''Assessment'' includes, but is not limited to, ''special assessment,'' ''benefit assessment,'' ''maintenance assessment'' and ''special assessment tax.''

(c) ''Capital cost'' means the cost of acquisition, installation, construction, reconstruction, or replacement of a permanent public improvement by an agency.

(d) ''District'' means an area determined by an agency to contain all parcels which will receive a special benefit from a proposed public improvement or property-related service.

(e) ''Fee'' or ''charge'' means any levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property-related service.

(f) ''Maintenance and operation expenses'' means the cost of rent, repair, replacement, rehabilitation, fuel, power, electrical current, care, and supervision necessary to properly operate and maintain a permanent public improvement.

(g) ''Property ownership'' shall be deemed to include tenancies of real property where tenants are directly liable to pay the assessment, fee, or charge in question.

(h) ''Property-related service'' means a public service having a direct relationship to property ownership.

(i) ''Special benefit'' means a particular and distinct benefit over and above general benefits conferred on real property located in the district or

* New Article XIII D adopted November 5, 1996. Initiative measure.

to the public at large. General enhancement of property value does not constitute ''special benefit.'' [*New section adopted November 5, 1996. Initiative measure.*]

SEC. 3. Property Taxes, Assessments, Fees and Charges Limited. (a) No tax, assessment, fee, or charge shall be assessed by any agency upon any parcel of property or upon any person as an incident of property ownership except:

(1) The ad valorem property tax imposed pursuant to Article XIII and Article XIII A.

(2) Any special tax receiving a two-thirds vote pursuant to Section 4 of Article XIII A.

(3) Assessments as provided by this article.

(4) Fees or charges for property-related services as provided by this article.

(b) For purposes of this article, fees for the provision of electrical or gas service shall not be deemed charges or fees imposed as an incident of property ownership. [*New section adopted November 5, 1996. Initiative measure.*]

SEC. 4. Procedures and Requirements for All Assessments. (a) An agency which proposes to levy an assessment shall identify all parcels which will have a special benefit conferred upon them and upon which an assessment will be imposed. The proportionate special benefit derived by each identified parcel shall be determined in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the property-related service being provided. No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable, and an agency shall separate the general benefits from the special benefits conferred on a parcel. Parcels within a district that are owned or used by any agency, the State of California or the United States shall not be exempt from assessment unless the agency can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit.

(b) All assessments shall be supported by a detailed engineer's report prepared by a registered professional engineer certified by the State of California.

(c) The amount of the proposed assessment for each identified parcel shall be calculated and the record owner of each parcel shall be given written notice by mail of the proposed assessment, the total amount thereof chargeable to the entire district, the amount chargeable to the owner's particular parcel, the duration of the payments, the reason for the assessment and the basis upon which the amount of the proposed assessment was calculated, together with the date, time, and location of a public hearing on the proposed assessment. Each notice shall also include, in a conspicuous

place thereon, a summary of the procedures applicable to the completion, return, and tabulation of the ballots required pursuant to subdivision (d), including a disclosure statement that the existence of a majority protest, as defined in subdivision (e), will result in the assessment not being imposed.

(d) Each notice mailed to owners of identified parcels within the district pursuant to subdivision (c) shall contain a ballot which includes the agency's address for receipt of the ballot once completed by any owner receiving the notice whereby the owner may indicate his or her name, reasonable identification of the parcel, and his or her support or opposition to the proposed assessment.

(e) The agency shall conduct a public hearing upon the proposed assessment not less than 45 days after mailing the notice of the proposed assessment to record owners of each identified parcel. At the public hearing, the agency shall consider all protests against the proposed assessment and tabulate the ballots. The agency shall not impose an assessment if there is a majority protest. A majority protest exists if, upon the conclusion of the hearing, ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment. In tabulating the ballots, the ballots shall be weighted according to the proportional financial obligation of the affected property.

(f) In any legal action contesting the validity of any assessment, the burden shall be on the agency to demonstrate that the property or properties in question receive a special benefit over and above the benefits conferred on the public at large and that the amount of any contested assessment is proportional to, and no greater than, the benefits conferred on the property or properties in question.

(g) Because only special benefits are assessable, electors residing within the district who do not own property within the district shall not be deemed under this Constitution to have been deprived of the right to vote for any assessment. If a court determines that the Constitution of the United States or other federal law requires otherwise, the assessment shall not be imposed unless approved by a two-thirds vote of the electorate in the district in addition to being approved by the property owners as required by subdivision (e). [*New section adopted November 5, 1996. Initiative measure.*]

SEC. 5. Effective Date. Pursuant to subdivision (a) of Section 10 of Article II, the provisions of this article shall become effective the day after the election unless otherwise provided. Beginning July 1, 1997, all existing, new, or increased assessments shall comply with this article. Notwithstanding the foregoing, the following assessments existing on the effective date of this article shall be exempt from the procedures and approval process set forth in Section 4:

(a) Any assessment imposed exclusively to finance the capital costs or maintenance and operation expenses for sidewalks, streets, sewers, water,

flood control, drainage systems or vector control. Subsequent increases in such assessments shall be subject to the procedures and approval process set forth in Section 4.

(b) Any assessment imposed pursuant to a petition signed by the persons owning all of the parcels subject to the assessment at the time the assessment is initially imposed. Subsequent increases in such assessments shall be subject to the procedures and approval process set forth in Section 4.

(c) Any assessment the proceeds of which are exclusively used to repay bonded indebtedness of which the failure to pay would violate the Contract Impairment Clause of the Constitution of the United States.

(d) Any assessment which previously received majority voter approval from the voters voting in an election on the issue of the assessment. Subsequent increases in those assessments shall be subject to the procedures and approval process set forth in Section 4. [*New section adopted November 5, 1996. Initiative measure.*]

SEC. 6. Property-Related Fees and Charges. (a) Procedures for New or Increased Fees and Charges. An agency shall follow the procedures pursuant to this section in imposing or increasing any fee or charge as defined pursuant to this article, including, but not limited to, the following:

(1) The parcels upon which a fee or charge is proposed for imposition shall be identified. The amount of the fee or charge proposed to be imposed upon each parcel shall be calculated. The agency shall provide written notice by mail of the proposed fee or charge to the record owner of each identified parcel upon which the fee or charge is proposed for imposition, the amount of the fee or charge proposed to be imposed upon each, the basis upon which the amount of the proposed fee or charge was calculated, the reason for the fee or charge, together with the date, time, and location of a public hearing on the proposed fee or charge.

(2) The agency shall conduct a public hearing upon the proposed fee or charge not less than 45 days after mailing the notice of the proposed fee or charge to the record owners of each identified parcel upon which the fee or charge is proposed for imposition. At the public hearing, the agency shall consider all protests against the proposed fee or charge. If written protests against the proposed fee or charge are presented by a majority of owners of the identified parcels, the agency shall not impose the fee or charge.

(b) Requirements for Existing, New or Increased Fees and Charges. A fee or charge shall not be extended, imposed, or increased by any agency unless it meets all of the following requirements:

(1) Revenues derived from the fee or charge shall not exceed the funds required to provide the property-related service.

(2) Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed.

(3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.

(4) No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted. Standby charges, whether characterized as charges or assessments, shall be classified as assessments and shall not be imposed without compliance with Section 4.

(5) No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners.
Reliance by an agency on any parcel map, including, but not limited to, an assessor's parcel map, may be considered a significant factor in determining whether a fee or charge is imposed as an incident of property ownership for purposes of this article. In any legal action contesting the validity of a fee or charge, the burden shall be on the agency to demonstrate compliance with this article.

(c) Voter Approval for New or Increased Fees and Charges. Except for fees or charges for sewer, water, and refuse collection services, no property-related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the property owners of the property subject to the fee or charge or, at the option of the agency, by a two-thirds vote of the electorate residing in the affected area. The election shall be conducted not less than 45 days after the public hearing. An agency may adopt procedures similar to those for increases in assessments in the conduct of elections under this subdivision.

(d) Beginning July 1, 1997, all fees or charges shall comply with this section. [*New section adopted November 5, 1996. Initiative measure.*]

ARTICLE XIV. [*Repealed June 8, 1976. See Article XIV, below.*]

ARTICLE XIV*

LABOR RELATIONS

SECTION 1. [*Repealed June 8, 1976. See Section 1, below.*]

[*Minimum Wages and General Welfare of Employees*]

SECTION 1. The Legislature may provide for minimum wages and for the general welfare of employees and for those purposes may confer on a commission legislative, executive, and judicial powers. [*New section adopted June 8, 1976.*]

SEC. 2. [*Repealed June 8, 1976. See Section 2, below.*]

[*Eight-hour Workday*]

SEC. 2. Worktime of mechanics or workers on public works may not exceed eight hours a day except in wartime or extraordinary emergencies that endanger life or property. The Legislature shall provide for enforcement of this section. [*New section adopted June 8, 1976.*]

SEC. 3. [*Repealed June 8, 1976. See Section 3, below.*]

[*Mechanics' Liens*]

SEC. 3. Mechanics, persons furnishing materials, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material for the value of such labor done and material furnished; and the Legislature shall provide, by law, for the speedy and efficient enforcement of such liens. [*New section adopted June 8, 1976.*]

SEC. 4. [*Repealed June 8, 1976. See Section 4, below.*]

[*Workers' Compensation*]

SEC. 4. The Legislature is hereby expressly vested with plenary power, unlimited by any provision of this Constitution, to create, and enforce a complete system of workers' compensation, by appropriate legislation, and in that behalf to create and enforce a liability on the part of any or all persons to compensate any or all of their workers for injury or disability, and their dependents for death incurred or sustained by the said workers in the course of their employment, irrespective of the fault of any party. A complete system of workers' compensation includes adequate provisions for the comfort, health and safety and general welfare of any and all workers and those dependent upon them for support to the extent of relieving from the consequences of any injury or death incurred or sus-

* New Article XIV adopted June 8, 1976.

tained by workers in the course of their employment, irrespective of the fault of any party; also full provision for securing safety in places of employment; full provision for such medical, surgical, hospital and other remedial treatment as is requisite to cure and relieve from the effects of such injury; full provision for adequate insurance coverage against liability to pay or furnish compensation; full provision for regulating such insurance coverage in all its aspects, including the establishment and management of a state compensation insurance fund; full provision for otherwise securing the payment of compensation; and full provision for vesting power, authority and jurisdiction in an administrative body with all the requisite governmental functions to determine any dispute or matter arising under such legislation, to the end that the administration of such legislation shall accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character; all of which matters are expressly declared to be the social public policy of this State, binding upon all departments of the state government.

The Legislature is vested with plenary powers, to provide for the settlement of any disputes arising under such legislation by arbitration, or by an industrial accident commission, by the courts, or by either, any, or all of these agencies, either separately or in combination, and may fix and control the method and manner of trial of any such dispute, the rules of evidence and the manner of review of decisions rendered by the tribunal or tribunals designated by it; provided, that all decisions of any such tribunal shall be subject to review by the appellate courts of this State. The Legislature may combine in one statute all the provisions for a complete system of workers' compensation, as herein defined.

The Legislature shall have power to provide for the payment of an award to the State in the case of the death, arising out of and in the course of the employment, of an employee without dependents, and such awards may be used for the payment of extra compensation for subsequent injuries beyond the liability of a single employer for awards to employees of the employer.

Nothing contained herein shall be taken or construed to impair or render ineffectual in any measure the creation and existence of the industrial accident commission of this State or the state compensation insurance fund, the creation and existence of which, with all the functions vested in them, are hereby ratified and confirmed. [*New section adopted June 8, 1976.*]

SEC. 5. [*Repealed November 6, 1990. See Section 5, below.*]

[*Inmate Labor*]

SECTION 5. (a) The Director of Corrections or any county Sheriff or other local government official charged with jail operations, may enter into contracts with public entities, nonprofit or for profit organizations, entities, or businesses for the purpose of conducting programs which use in-

mate labor. Such programs shall be operated and implemented pursuant to statutes enacted by or in accordance with the provisions of the Prison Inmate Labor Initiative of 1990, and by rules and regulations prescribed by the Director of Corrections and, for county jail programs, by local ordinances.

(b) No contract shall be executed with an employer that will initiate employment by inmates in the same job classification as non-inmate employees of the same employer who are on strike, as defined in Section 1132.6 of the Labor Code, as it reads on January 1, 1990, or who are subject to lockout, as defined in Section 1132.8 of the Labor Code, as it reads on January 1, 1990. Total daily hours worked by inmates employed in the same job classification as non-inmate employees of the same employer who are on strike, as defined in Section 1132.6 of the Labor Code, as it reads on January 1, 1990, or who are subject to lockout, as defined in Section 1132.8 of the Labor Code, as it reads on January 1, 1990, shall not exceed, for the duration of the strike, the average daily hours worked for the preceding six months, or if the program has been in operation for less than six months, the average for the period of operation.

(c) Nothing in this section shall be interpreted as creating a right of inmates to work. [*New section adopted November 6, 1990. Initiative measure.*]

ARTICLE XV. [*Repealed June 8, 1976. See Article XV, below.*]

ARTICLE XV*

USURY

[*Rate of Interest*]

SECTION 1. The rate of interest upon the loan or forbearance of any money, goods, or things in action, or on accounts after demand, shall be 7 percent per annum but it shall be competent for the parties to any loan or forbearance of any money, goods or things in action to contract in writing for a rate of interest:

(1) For any loan or forbearance of any money, goods, or things in action, if the money, goods, or things in action are for use primarily for personal, family, or household purposes, at a rate not exceeding 10 percent per annum; provided, however, that any loan or forbearance of any money, goods or things in action the proceeds of which are used primarily for the purchase, construction or improvement of real property shall not be deemed to be a use primarily for personal, family or household purposes; or

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* New Article XV adopted June 8, 1976.

(2) For any loan or forbearance of any money, goods, or things in action for any use other than specified in paragraph (1), at a rate not exceeding the higher of (a) 10 percent per annum or (b) 5 percent per annum plus the rate prevailing on the 25th day of the month preceding the earlier of (i) the date of execution of the contract to make the loan or forbearance, or (ii) the date of making the loan or forbearance established by the Federal Reserve Bank of San Francisco on advances to member banks under Sections 13 and 13a of the Federal Reserve Act as now in effect or hereafter from time to time amended (or if there is no such single determinable rate of advances, the closest counterpart of such rate as shall be designated by the Superintendent of Banks of the State of California unless some other person or agency is delegated such authority by the Legislature).

[*Charges*]

No person, association, copartnership or corporation shall by charging any fee, bonus, commission, discount or other compensation receive from a borrower more than the interest authorized by this section upon any loan or forbearance of any money, goods or things in action.

[*Exemptions*]

However, none of the above restrictions shall apply to any obligations of, loans made by, or forbearances of, any building and loan association as defined in and which is operated under that certain act known as the ''Building and Loan Association Act,'' approved May 5, 1931, as amended, or to any corporation incorporated in the manner prescribed in and operating under that certain act entitled ''An act defining industrial loan companies, providing for their incorporation, powers and supervision,'' approved May 18, 1917, as amended, or any corporation incorporated in the manner prescribed in and operating under that certain act entitled ''An act defining credit unions, providing for their incorporation, powers, management and supervision,'' approved March 31, 1927, as amended or any duly licensed pawnbroker or personal property broker, or any loans made or arranged by any person licensed as a real estate broker by the State of California and secured in whole or in part by liens on real property, or any bank as defined in and operating under that certain act known as the ''Bank Act,'' approved March 1, 1909, as amended, or any bank created and operating under and pursuant to any laws of this State or of the United States of America or any nonprofit cooperative association organized under Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code in loaning or advancing money in connection with any activity mentioned in said title or any corporation, association, syndicate, joint stock company, or partnership engaged exclusively in the business of marketing agricultural, horticultural, viticultural, dairy, live stock, poultry and bee products on a cooperative nonprofit basis

in loaning or advancing money to the members thereof or in connection with any such business or any corporation securing money or credit from any federal intermediate credit bank, organized and existing pursuant to the provisions of an act of Congress entitled ''Agricultural Credits Act of 1923,'' as amended in loaning or advancing credit so secured, or any other class of persons authorized by statute, or to any successor in interest to any loan or forbearance exempted under this article, nor shall any such charge of any said exempted classes of persons be considered in any action or for any purpose as increasing or affecting or as connected with the rate of interest hereinbefore fixed. The Legislature may from time to time prescribe the maximum rate per annum of, or provide for the supervision, or the filing of a schedule of, or in any manner fix, regulate or limit, the fees, bonuses, commissions, discounts or other compensation which all or any of the said exempted classes of persons may charge or receive from a borrower in connection with any loan or forbearance of any money, goods or things in action.

[*Judgments Rendered in Court—Rate of Interest*]

The rate of interest upon a judgment rendered in any court of this State shall be set by the Legislature at not more than 10 percent per annum. Such rate may be variable and based upon interest rates charged by federal agencies or economic indicators, or both.

In the absence of the setting of such rate by the Legislature, the rate of interest on any judgment rendered in any court of the State shall be 7 percent per annum.

[*Scope of Section*]

The provisions of this section shall supersede all provisions of this Constitution and laws enacted thereunder in conflict therewith. [*As amended November 6, 1979.*]

SEC. 2. [*Repealed June 8, 1976.*]

SEC. 3. [*Repealed June 8, 1976.*]

ARTICLE XVI

PUBLIC FINANCE

[*Heading as amended November 5, 1974.*]

[*State Indebtedness—Limitation—Two-thirds Vote to Submit Bond Law—Submission of Law to Electors*]

SECTION 1. The Legislature shall not, in any manner create any debt or debts, liability or liabilities, which shall, singly or in the aggregate with any previous debts or liabilities, exceed the sum of three hundred thousand dollars ($300,000), except in case of war to repel invasion or suppress in-

surrection, unless the same shall be authorized by law for some single object or work to be distinctly specified therein which law shall provide ways and means, exclusive of loans, for the payment of the interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within 50 years of the time of the contracting thereof, and shall be irrepealable until the principal and interest thereon shall be paid and discharged, and such law may make provision for a sinking fund to pay the principal of such debt or liability to commence at a time after the incurring of such debt or liability of not more than a period of one-fourth of the time of maturity of such debt or liability; but no such law shall take effect unless it has been passed by a two-thirds vote of all the members elected to each house of the Legislature and until, at a general election or at a direct primary, it shall have been submitted to the people and shall have received a majority of all the votes cast for and against it at such election; and all moneys raised by authority of such law shall be applied only to the specific object therein stated or to the payment of the debt thereby created. Full publicity as to matters to be voted upon by the people is afforded by the setting out of the complete text of the proposed laws, together with the arguments for and against them, in the ballot pamphlet mailed to each elector preceding the election at which they are submitted, and the only requirement for publication of such law shall be that it be set out at length in ballot pamphlets which the Secretary of State shall cause to be printed. The Legislature may, at any time after the approval of such law by the people, reduce the amount of the indebtedness authorized by the law to an amount not less than the amount contracted at the time of the reduction, or it may repeal the law if no debt shall have been contracted in pursuance thereof.

Notwithstanding any other provision of this Constitution, Members of the Legislature who are required to meet with the State Allocation Board shall have equal rights and duties with the nonlegislative members to vote and act upon matters pending or coming before such board for the allocation and apportionment of funds to school districts for school construction purposes or purposes related thereto.

Notwithstanding any other provision of this constitution, or of any bond act to the contrary, if any general obligation bonds of the State heretofore or hereafter authorized by vote of the people have been offered for sale and not sold, the Legislature may raise the maximum rate of interest payable on all general obligation bonds authorized but not sold, whether or not such bonds have been offered for sale, by a statute passed by a two-thirds vote of all members elected to each house thereof.

The provisions of Senate Bill No. 763† of the 1969 Regular Session, which authorize an increase of the state general obligation bond maximum interest rate from 5 percent to an amount not in excess of 7 percent and

† Chapter 740.

eliminate the maximum rate of interest payable on notes given in anticipation of the sale of such bonds, are hereby ratified. [*As amended June 2, 1970.*]

[*General Obligation Bond Proceeds Fund*]

SEC. 1.5. The Legislature may create and establish a ''General Obligation Bond Proceeds Fund'' in the State Treasury, and may provide for the proceeds of the sale of general obligation bonds of the State heretofore or hereafter issued, including any sums paid as accrued interest thereon, under any or all acts authorizing the issuance of such bonds, to be paid into or transferred to, as the case may be, the ''General Obligation Bond Proceeds Fund.'' Accounts shall be maintained in the ''General Obligation Bond Proceeds Fund'' of all moneys deposited in the State Treasury to the credit of that fund and the proceeds of each bond issue shall be maintained as a separate and distinct account and shall be paid out only in accordance with the law authorizing the issuance of the particular bonds from which the proceeds were derived. The Legislature may abolish, subject to the conditions of this section, any fund in the State Treasury heretofore or hereafter created by any act for the purpose of having deposited therein the proceeds from the issuance of bonds if such proceeds are transferred to or paid into the ''General Obligation Bond Proceeds Fund'' pursuant to the authority granted in this section; provided, however, that nothing in this section shall prevent the Legislature from re-establishing any bond proceeds fund so abolished and transferring back to its credit all proceeds in the ''General Obligation Bond Proceeds Fund'' which constitute the proceeds of the particular bond fund being re-established. [*New section adopted November 6, 1962.*]

SEC. 2. [*Repealed November 6, 1962. See Section 2, below.*]

[*Bond Issues—Submission by Constitutional Amendment Prohibited—Repeal of Certain Constitutional Provisions*]

SEC. 2. (a) No amendment to this Constitution which provides for the preparation, issuance and sale of bonds of the State of California shall hereafter be submitted to the electors, nor shall any such amendment to the Constitution hereafter submitted to or approved by the electors become effective for any purpose.

Each measure providing for the preparation, issuance and sale of bonds of the State of California shall hereafter be submitted to the electors in the form of a bond act or statute.

(b) The provisions of this Constitution enumerated in subdivision (c) of this section are repealed and such provisions are continued as statutes which have been approved, adopted, legalized, ratified, validated, and made fully and completely effective, by means of the adoption by the electorate of a ratifying constitutional amendment, except that the Legislature,

in addition to whatever powers it possessed under such provisions, may amend or repeal such provisions when the bonds issued thereunder have been fully retired and when no rights thereunder will be damaged.

(c) The enumerated provisions of this Constitution are: Article XVI, Sections 2, 3, 4, 4½, 5, 6, 8, 8½, 15, 16, 16.5, 17, 18, 19, 19.5, 20 and 21. [*New section adopted November 6, 1962.*]

[*Appropriations*]

SEC. 3. No money shall ever be appropriated or drawn from the State Treasury for the purpose or benefit of any corporation, association, asylum, hospital, or any other institution not under the exclusive management and control of the State as a state institution, nor shall any grant or donation of property ever be made thereto by the State, except that notwithstanding anything contained in this or any other section of the Constitution:

[*Federal Funds*]

(1) Whenever federal funds are made available for the construction of hospital facilities by public agencies and nonprofit corporations organized to construct and maintain such facilities, nothing in this Constitution shall prevent the Legislature from making state money available for that purpose, or from authorizing the use of such money for the construction of hospital facilities by nonprofit corporations organized to construct and maintain such facilities.

[*Institution for Support of Orphans or Aged Indigents*]

(2) The Legislature shall have the power to grant aid to the institutions conducted for the support and maintenance of minor orphans, or half-orphans, or abandoned children, or children of a father who is incapacitated for gainful work by permanent physical disability or is suffering from tuberculosis in such a stage that he cannot pursue a gainful occupation, or aged persons in indigent circumstances—such aid to be granted by a uniform rule, and proportioned to the number of inmates of such respective institutions.

[*Needy Blind*]

(3) The Legislature shall have the power to grant aid to needy blind persons not inmates of any institution supported in whole or in part by the State or by any of its political subdivisions, and no person concerned with the administration of aid to needy blind persons shall dictate how any applicant or recipient shall expend such aid granted him, and all money paid to a recipient of such aid shall be intended to help him meet his individual needs and is not for the benefit of any other person, and such aid when granted shall not be construed as income to any person other than the blind

recipient of such aid, and the State Department of Social Welfare shall take all necessary action to enforce the provisions relating to aid to needy blind persons as heretofore stated.

[*Physically Handicapped Persons*]

(4) The Legislature shall have power to grant aid to needy physically handicapped persons not inmates of any institution under the supervision of the Department of Mental Hygiene and supported in whole or in part by the State or by any institution supported in whole or part by any political subdivision of the State.

[*Management of Institutions*]

(5) The State shall have at any time the right to inquire into the management of such institutions.

[*Orphans, Aged Indigents, Needy Blind—County Support*]

(6) Whenever any county, or city and county, or city, or town, shall provide for the support of minor orphans, or half-orphans, or abandoned children, or children of a father who is incapacitated for gainful work by permanent physical disability or is suffering from tuberculosis in such a stage that he cannot pursue a gainful occupation, or aged persons in indigent circumstances, or needy blind persons not inmates of any institution supported in whole or in part by the State or by any of its political subdivisions, or needy physically handicapped persons not inmates of any institution under the supervision of the Department of Mental Hygiene and supported in whole or in part by the State or by any institution supported in whole or part by any political subdivision of the State; such county, city and county, city, or town shall be entitled to receive the same pro rata appropriations as may be granted to such institutions under church, or other control.

[*Receipts and Expenditures of Public Moneys*]

An accurate statement of the receipts and expenditures of public moneys shall be attached to and published with the laws at every regular session of the Legislature. [*New section adopted November 5, 1974.*]

[*Loan Guarantees re Nonprofit Corporations and Public Agencies*]

SEC. 4. The Legislature shall have the power to insure or guarantee loans made by private or public lenders to nonprofit corporations and public agencies, the proceeds of which are to be used for the construction, expansion, enlargement, improvement, renovation or repair of any public or nonprofit hospital, hospital facility, or extended care facility, facility for the treatment of mental illness, or all of them, including any outpatient fa-

cility and any other facility useful and convenient in the operation of the hospital and any original equipment for any such hospital or facility, or both.

No provision of this Constitution, including but not limited to, Section 1 of Article XVI and Section 14 of Article XI, shall be construed as a limitation upon the authority granted to the Legislature by this section. [*New section adopted November 5, 1974.*]

SEC. 4½. [*Repealed November 6, 1962.*]

[*Religious Institutions—Grants Prohibited*]

SEC. 5. Neither the Legislature, nor any county, city and county, township, school district, or other municipal corporation, shall ever make an appropriation, or pay from any public fund whatever, or grant anything to or in aid of any religious sect, church, creed, or sectarian purpose, or help to support or sustain any school, college, university, hospital, or other institution controlled by any religious creed, church, or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the State, or any city, city and county, town, or other municipal corporation for any religious creed, church, or sectarian purpose whatever; provided, that nothing in this section shall prevent the Legislature granting aid pursuant to Section 3 of Article XVI. [*New section adopted November 5, 1974.*]

[*Gifts or Loans of Public Moneys or Pledging of Credit Prohibited—Stock of Corporations*]

SEC. 6. The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State, or of any county, city and county, city, township or other political corporation or subdivision of the State now existing, or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal or other corporation whatever; nor shall it have power to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever; provided, that nothing in this section shall prevent the Legislature granting aid pursuant to Section 3 of Article XVI; and it shall not have power to authorize the State, or any political subdivision thereof, to subscribe for stock, or to become a stockholder in any corporation whatever; provided, further, that irrigation districts for the purpose of acquiring the control of any entire international water system necessary for its use and purposes, a part of which is situated in the United States, and a part thereof in a foreign country, may in the manner authorized by law, acquire the stock of any foreign corporation which is the owner of, or which holds the title to the part of such system

situated in a foreign country; provided, further, that irrigation districts for the purpose of acquiring water and water rights and other property necessary for their uses and purposes, may acquire and hold the stock of corporations, domestic or foreign, owning waters, water rights, canals, waterworks, franchises or concessions subject to the same obligations and liabilities as are imposed by law upon all other stockholders in such corporation; and

[*Insurance Pooling Arrangements*]

Provided, further, that this section shall not prohibit any county, city and county, city, township, or other political corporation or subdivision of the State from joining with other such agencies in providing for the payment of workers' compensation, unemployment compensation, tort liability, or public liability losses incurred by such agencies, by entry into an insurance pooling arrangement under a joint exercise of powers agreement, or by membership in such publicly-owned nonprofit corporation or other public agency as may be authorized by the Legislature; and

[*Aid to Veterans*]

Provided, further, that nothing contained in this Constitution shall prohibit the use of state money or credit, in aiding veterans who served in the military or naval service of the United States during the time of war, in the acquisition of, or payments for, (1) farms or homes, or in projects of land settlement or in the development of such farms or homes or land settlement projects for the benefit of such veterans, or (2) any business, land or any interest therein, buildings, supplies, equipment, machinery, or tools, to be used by the veteran in pursuing a gainful occupation; and

[*Disaster Assistance*]

Provided, further, that nothing contained in this Constitution shall prohibit the State, or any county, city and county, city, township, or other political corporation or subdivision of the State from providing aid or assistance to persons, if found to be in the public interest, for the purpose of clearing debris, natural materials, and wreckage from privately owned lands and waters deposited thereon or therein during a period of a major disaster or emergency, in either case declared by the President. In such case, the public entity shall be indemnified by the recipient from the award of any claim against the public entity arising from the rendering of such aid or assistance. Such aid or assistance must be eligible for federal reimbursement for the cost thereof.

[*Temporary Transfers of Funds to Political Subdivisions*]

And provided, still further, that notwithstanding the restrictions contained in this Constitution, the treasurer of any city, county, or city and county shall have power and the duty to make such temporary transfers

from the funds in custody as may be necessary to provide funds for meeting the obligations incurred for maintenance purposes by any city, county, city and county, district, or other political subdivision whose funds are in custody and are paid out solely through the treasurer's office. Such temporary transfer of funds to any political subdivision shall be made only upon resolution adopted by the governing body of the city, county, or city and county directing the treasurer of such city, county, or city and county to make such temporary transfer. Such temporary transfer of funds to any political subdivision shall not exceed 85 percent of the anticipated revenues accruing to such political subdivision, shall not be made prior to the first day of the fiscal year nor after the last Monday in April of the current fiscal year, and shall be replaced from the revenues accruing to such political subdivision before any other obligation of such political subdivision is met from such revenue. [*As amended November 2, 1982.*]

[*Controller's Warrants*]

SEC. 7. Money may be drawn from the Treasury only through an appropriation made by law and upon a Controller's duly drawn warrant. [*New section adopted November 5, 1974.*]

[*School Funding Priority*]

SEC. 8. (a) From all state revenues there shall first be set apart the moneys to be applied by the State for support of the public school system and public institutions of higher education.

(b) Commencing with the 1990–91 fiscal year, the moneys to be applied by the State for the support of school districts and community college districts shall be not less than the greater of the following amounts:

(1) The amount which, as a percentage of General Fund revenues which may be appropriated pursuant to Article XIII B, equals the percentage of General Fund revenues appropriated for school districts and community college districts, respectively, in fiscal year 1986–87.

(2) The amount required to ensure that the total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B and allocated local proceeds of taxes shall not be less than the total amount from these sources in the prior fiscal year, excluding any revenues allocated pursuant to subdivision (a) of Section 8.5, adjusted for changes in enrollment and adjusted for the change in the cost of living pursuant to paragraph (1) of subdivision (e) of Section 8 of Article XIII B. This paragraph shall be operative only in a fiscal year in which the percentage growth in California per capita personal income is less than or equal to the percentage growth in per capita General Fund revenues plus one half of one percent.

(3) (A) The amount required to ensure that the total allocations to school districts and community college districts from General Fund pro-

ceeds of taxes appropriated pursuant to Article XIII B and allocated local proceeds of taxes shall equal the total amount from these sources in the prior fiscal year, excluding any revenues allocated pursuant to subdivision (a) of Section 8.5, adjusted for changes in enrollment and adjusted for the change in per capita General Fund revenues.

(B) In addition, an amount equal to one-half of one percent times the prior year total allocations to school districts and community colleges from General Fund proceeds of taxes appropriated pursuant to Article XIII B and allocated local proceeds of taxes, excluding any revenues allocated pursuant to subdivision (a) of Section 8.5, adjusted for changes in enrollment.

(C) This paragraph (3) shall be operative only in a fiscal year in which the percentage growth in California per capita personal income in a fiscal year is greater than the percentage growth in per capital General Fund revenues plus one half of one percent.

(c) In any fiscal year, if the amount computed pursuant to paragraph (1) of subdivision (b) exceeds the amount computed pursuant to paragraph (2) of subdivision (b) by a difference that exceeds one and one-half percent of General Fund revenues, the amount in excess of one and one-half percent of General Fund revenues shall not be considered allocations to school districts and community colleges for purposes of computing the amount of state aid pursuant to paragraph (2) or 3 of subdivision (b) in the subsequent fiscal year.

(d) In any fiscal year in which school districts and community college districts are allocated funding pursuant to paragraph (3) of subdivision (b) or pursuant to subdivision (h), they shall be entitled to a maintenance factor, equal to the difference between (1) the amount of General Fund moneys which would have been appropriated pursuant to paragraph (2) of subdivision (b) if that paragraph had been operative or the amount of General Fund moneys which would have been appropriated pursuant to subdivision (b) had subdivision (b) not been suspended, and (2) the amount of General Fund moneys actually appropriated to school districts and community college districts in that fiscal year.

(e) The maintenance factor for school districts and community college districts determined pursuant to subdivision (d) shall be adjusted annually for changes in enrollment, and adjusted for the change in the cost of living pursuant to paragraph (1) of subdivision (e) of Section 8 of Article XIII B, until it has been allocated in full. The maintenance factor shall be allocated in a manner determined by the Legislature in each fiscal year in which the percentage growth in per capita General Fund revenues exceeds the percentage growth in California per capita personal income. The maintenance factor shall be reduced each year by the amount allocated by the Legislature in that fiscal year. The minimum maintenance factor amount to be allocated in a fiscal year shall be equal to the product of General Fund rev-

enues from proceeds of taxes and one-half of the difference between the percentage growth in per capita General Fund revenues from proceeds of taxes and in California per capita personal income, not to exceed the total dollar amount of the maintenance factor.

(f) For purposes of this section, ''changes in enrollment'' shall be measured by the percentage change in average daily attendance. However, in any fiscal year, there shall be no adjustment for decreases in enrollment between the prior fiscal year and the current fiscal year unless there have been decreases in enrollment between the second prior fiscal year and the prior fiscal year and between the third prior fiscal year and the second prior fiscal year.

(h) Subparagraph (B) of paragraph (3) of subdivision (b) may be suspended for one year only when made part of or included within any bill enacted pursuant to Section 12 of Article IV. All other provisions of subdivision (b) may be suspended for one year by the enactment of an urgency statute pursuant to Section 8 of Article IV, provided that the urgency statute may not be made part of or included within any bill enacted pursuant to Section 12 of Article IV. [*As amended June 5, 1990. Operative July 1, 1990.*]

SEC. 8½. [*Repealed November 6, 1962.*]

[*Allocations to State School Fund*]

SECTION 8.5. (a) In addition to the amount required to be applied for the support of school districts and community college districts pursuant to Section 8, the Controller shall during each fiscal year transfer and allocate all revenues available pursuant to paragraph 1 of subdivision (a) of Section 2 of Article XIII B to that portion of the State School Fund restricted for elementary and high school purposes, and to that portion of the State School Fund restricted for community college purposes, respectively, in proportion to the enrollment in school districts and community college districts respectively.

(1) With respect to funds allocated to that portion of the State School Fund restricted for elementary and high school purposes, no transfer or allocation of funds pursuant to this section shall be required at any time that the Director of Finance and the Superintendent of Public Instruction mutually determine that current annual expenditures per student equal or exceed the average annual expenditure per student of the 10 states with the highest annual expenditures per student for elementary and high schools, and that average class size equals or is less than the average class size of the 10 states with the lowest class size for elementary and high schools.

(2) With respect to funds allocated to that portion of the State School Fund restricted for community college purposes, no transfer or allocation of funds pursuant to this section shall be required at any time that the Director of Finance and the Chancellor of the California Community Col-

leges mutually determine that current annual expenditures per student for community colleges in this State equal or exceed the average annual expenditure per student of the 10 states with the highest annual expenditure per student for community colleges.

(b) Notwithstanding the provisions of Article XIII B, funds allocated pursuant to this section shall not constitute appropriations subject to limitation.

(c) From any funds transferred to the State School Fund pursuant to subdivision (a), the Controller shall each year allocate to each school district and community college district an equal amount per enrollment in school districts from the amount in that portion of the State School Fund restricted for elementary and high school purposes and an equal amount per enrollment in community college districts from that portion of the State School Fund restricted for community college purposes.

(d) All revenues allocated pursuant to subdivision (a) shall be expended solely for the purposes of instructional improvement and accountability as required by law.

(e) Any school district maintaining an elementary or secondary school shall develop and cause to be prepared an annual audit accounting for such funds and shall adopt a School Accountability Report Card for each school. [*As amended June 5, 1990. Operative July 1, 1990.*]

[*Fish and Game*]

SEC. 9. Money collected under any state law relating to the protection or propagation of fish and game shall be used for activities relating thereto. [*New section adopted November 5, 1974.*]

[*Aged Aid—Federal-State Co-operation*]

SEC. 10. Whenever the United States government or any officer or agency thereof shall provide pensions or other aid for the aged, cooperation by the State therewith and therein is hereby authorized in such manner and to such extent as may be provided by law.

The money expended by any county, city and county, municipality, district or other political subdivision of this State made available under the provisions of this section shall not be considered as a part of the base for determining the maximum expenditure for any given year permissible under Section 20† of Article XI of this Constitution independent of the vote of the electors or authorization by the State Board of Equalization. [*As amended November 6, 1962.*]

[*Relief Administration*]

SEC. 11. The Legislature has plenary power to provide for the administration of any constitutional provisions or laws heretofore or hereafter

† Section 20, Article XI, repealed June 2, 1970.

enacted concerning the administration of relief, and to that end may modify, transfer, or enlarge the powers vested in any state agency or officer concerned with the administration of relief or laws appertaining thereto. The Legislature, or the people by initiative, shall have power to amend, alter, or repeal any law relating to the relief of hardship and destitution, whether such hardship and destitution results from unemployment or from other causes, or to provide for the administration of the relief of hardship and destitution, whether resulting from unemployment or from other causes, either directly by the State or through the counties of the State, and to grant such aid to the counties therefor, or make such provision for reimbursement of the counties by the State, as the Legislature deems proper. [*As amended November 6, 1962.*]

SEC. 12. [*Repealed November 6, 1962.*]

[*Legislative Power to Release Encumbrances Taken as Security for Aid to Aged*]

SEC. 13. Notwithstanding any other provision of this Constitution, the Legislature shall have power to release, rescind, cancel, or otherwise nullify in whole or in part any encumbrance on property, personal obligation, or other form of security heretofore or hereafter exacted or imposed by the Legislature to secure the repayment to, or reimbursement of, the State, and the counties or other agencies of the state government, of aid lawfully granted to and received by aged persons. [*As amended November 6, 1962.*]

[*Bonds—Environmental Pollution Control Facilities*]

SEC. 14. The Legislature may provide for the issuance of revenue bonds to finance the acquisition, construction, and installation of environmental pollution control facilities, including the acquisition of all technological facilities necessary or convenient for pollution control, and for the lease or sale of such facilities to persons, associations, or corporations, other than municipal corporations; provided, that such revenue bonds shall not be secured by the taxing power of the State; and provided, further, that the Legislature may, by resolution adopted by either house, prohibit or limit any proposed issuance of such revenue bonds. No provision of this Constitution, including, but not limited to, Section 25 of Article XIII and Sections 1 and 2 of Article XVI, shall be construed as a limitation upon the authority granted to the Legislature pursuant to this section. Nothing herein contained shall authorize any public agency to operate any industrial or commercial enterprise. [*New section adopted November 7, 1972.*]

[*Energy Alternative Sources Facilities—Acquisition, Construction, Etc.—Revenue Bond Issuance*]

SEC. 14.5. The Legislature may provide for the issuance of revenue bonds to finance the acquisition, construction, and installation of facilities utilizing cogeneration technology, solar power, biomass, or any other al-

ternative source the Legislature may deem appropriate, including the acquisition of all technological facilities necessary or convenient for the use of alternative sources, and for the lease or sale of such facilities to persons, associations, or corporations, other than municipal corporations; provided, that such revenue bonds shall not be secured by the taxing power of the State; and provided, further, that the Legislature may, by resolution adopted by both houses, prohibit or limit any proposed issuance of such revenue bonds. No provision of this Constitution, including, but not limited to, Sections 1, 2, and 6, of this article, shall be construed as a limitation upon the authority granted to the Legislature pursuant to this section. Nothing contained herein shall authorize any public agency to operate any industrial or commercial enterprise. [*New section adopted June 3, 1980.*]

[*Parking Meter Revenues*]

SEC. 15. A public body authorized to issue securities to provide public parking facilities and any other public body whose territorial area includes such facilities are authorized to make revenues from street parking meters available as additional security. [*New section adopted November 5, 1974.*]

[*Taxation of Redevelopment Projects*]

SEC. 16. All property in a redevelopment project established under the Community Redevelopment Law as now existing or hereafter amended, except publicly owned property not subject to taxation by reason of that ownership, shall be taxed in proportion to its value as provided in Section 1 of this article, and those taxes (the word ''taxes'' as used herein includes, but is not limited to, all levies on an ad valorem basis upon land or real property) shall be levied and collected as other taxes are levied and collected by the respective taxing agencies.

The Legislature may provide that any redevelopment plan may contain a provision that the taxes, if any, so levied upon the 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 those 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 into, the funds of the respective taxing agencies as taxes by or for those 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 the ordinance's effective date, the assessment roll of the county last equalized on the effective date of that ordinance shall be used in determining the assessed valuation of the taxable property in the project on that effective date); and

(b) Except as provided in subdivision (c), 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 the 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 into the funds of the respective taxing agencies. When the loans, advances, and indebtedness, if any, and interest thereon, have been paid, then all moneys thereafter received from taxes upon the taxable property in the redevelopment project shall be paid into the funds of the respective taxing agencies as taxes on all other property are paid.

(c) That portion of the taxes identified in subdivision (b) 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 paragraph shall only apply to taxes levied to repay bonded indebtedness approved by the voters of the taxing agency on or after January 1, 1989.

The Legislature may also provide that in any redevelopment plan or in the proceedings for the advance of moneys, or making of loans, or the incurring of any indebtedness (whether funded, refunded, assumed, or otherwise) by the redevelopment agency to finance or refinance, in whole or in part, the redevelopment project, the portion of taxes identified in subdivision (b), exclusive of that portion identified in subdivision (c), may be irrevocably pledged for the payment of the principal of and interest on those loans, advances, or indebtedness.

It is intended by this section to empower any redevelopment agency, city, county, or city and county under any law authorized by this section to exercise the provisions hereof separately or in combination with powers granted by the same or any other law relative to redevelopment agencies. This section shall not affect any other law or laws relating to the same or

a similar subject but is intended to authorize an alternative method of procedure governing the subject to which it refers.

The Legislature shall enact those laws as may be necessary to enforce the provisions of this section. [*As amended November 8, 1988.*]

SEC. 16.5. [*Repealed November 6, 1962.*]

[*State's Credit—Investment of Public Pension or Retirement Funds*]

SEC. 17. The State shall not in any manner loan its credit, nor shall it subscribe to, or be interested in the stock of any company, association, or corporation, except that the State and each political subdivision, district, municipality, and public agency thereof is hereby authorized to acquire and hold shares of the capital stock of any mutual water company or corporation when the stock is so acquired or held for the purpose of furnishing a supply of water for public, municipal or governmental purposes; and the holding of the stock shall entitle the holder thereof to all of the rights, powers and privileges, and shall subject the holder to the obligations and liabilities conferred or imposed by law upon other holders of stock in the mutual water company or corporation in which the stock is so held.

Notwithstanding any other provisions of law or this Constitution to the contrary, the retirement board of a public pension or retirement system shall have plenary authority and fiduciary responsibility for investment of moneys and administration of the system, subject to all of the following:

(a) The retirement board of a public pension or retirement system shall have the sole and exclusive fiduciary responsibility over the assets of the public pension or retirement system. The retirement board shall also have sole and exclusive responsibility to administer the system in a manner that will assure prompt delivery of benefits and related services to the participants and their beneficiaries. The assets of a public pension or retirement system are trust funds and shall be held for the exclusive purposes of providing benefits to participants in the pension or retirement system and their beneficiaries and defraying reasonable expenses of administering the system.

(b) The members of the retirement board of a public pension or retirement system shall discharge their duties with respect to the system solely in the interest of, and for the exclusive purposes of providing benefits to, participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable expenses of administering the system. A retirement board's duty to its participants and their beneficiaries shall take precedence over any other duty.

(c) The members of the retirement board of a public pension or retirement system shall discharge their duties with respect to the system with the care, skill, prudence, and diligence under the circumstances then pre-

vailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims.

(d) The members of the retirement board of a public pension or retirement system shall diversify the investments of the system so as to minimize the risk of loss and to maximize the rate of return, unless under the circumstances it is clearly not prudent to do so.

(e) The retirement board of a public pension or retirement system, consistent with the exclusive fiduciary responsibilities vested in it, shall have the sole and exclusive power to provide for actuarial services in order to assure the competency of the assets of the public pension or retirement system.

(f) With regard to the retirement board of a public pension or retirement system which includes in its composition elected employee members, the number, terms, and method of selection or removal of members of the retirement board which were required by law or otherwise in effect on July 1, 1991, shall not be changed, amended, or modified by the Legislature unless the change, amendment, or modification enacted by the Legislature is ratified by a majority vote of the electors of the jurisdiction in which the participants of the system are or were, prior to retirement, employed.

(g) The Legislature may by statute continue to prohibit certain investments by a retirement board where it is in the public interest to do so, and provided that the prohibition satisfies the standards of fiduciary care and loyalty required of a retirement board pursuant to this section.

(h) As used in this section, the term ''retirement board'' shall mean the board of administration, board of trustees, board of directors, or other governing body or board of a public employees' pension or retirement system; provided, however, that the term ''retirement board'' shall not be interpreted to mean or include a governing body or board created after July 1, 1991 which does not administer pension or retirement benefits, or the elected legislative body of a jurisdiction which employs participants in a public employees' pension or retirement system. [*As amended November 3, 1992. Initiative measure.*]

[*Municipal Debt Exceeding Income*]

SEC. 18. No county, city, town, township, board of education, or school district, shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the qualified electors thereof, voting at an election to be held for that purpose, except that with respect to any such public entity which is authorized to incur indebtedness for public school purposes, any proposition for the incurrence of indebtedness in the form of general obligation bonds for the purpose of repairing, reconstructing or replacing public school buildings determined, in the

manner prescribed by law, to be structurally unsafe for school use, shall be adopted upon the approval of a majority of the qualified electors of the public entity voting on the proposition at such election; nor unless before or at the time of incurring such indebtedness provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also provision to constitute a sinking fund for the payment of the principal thereof, on or before maturity, which shall not exceed forty years from the time of contracting the same; provided, however, anything to the contrary herein notwithstanding, when two or more propositions for incurring any indebtedness or liability are submitted at the same election, the votes cast for and against each proposition shall be counted separately, and when two-thirds or a majority of the qualified electors, as the case may be, voting on any one of such propositions, vote in favor thereof, such proposition shall be deemed adopted. [*New section adopted November 5, 1974.*]

[*Public Improvement Proceedings by Chartered City or County*]

SEC. 19. All proceedings undertaken by any chartered city, or by any chartered county or by any chartered city and county for the construction of any public improvement, or the acquisition of any property for public use, or both, where the cost thereof is to be paid in whole or in part by special assessment or other special assessment taxes upon property, whether the special assessment will be specific or a special assessment tax upon property wholly or partially according to the assessed value of such property, shall be undertaken only in accordance with the provisions of law governing: (a) limitations of costs of such proceedings or assessments for such proceedings, or both, in relation to the value of any property assessed therefor; (b) determination of a basis for the valuation of any such property; (c) payment of the cost in excess of such limitations; (d) avoidance of such limitations; (e) postponement or abandonment, or both, of such proceedings in whole or in part upon majority protest, and particularly in accordance with such provisions as contained in Sections 10, 11 and 13a of the Special Assessment Investigation, Limitation and Majority Protest Act of 1931 or any amendments, codification, reenactment or restatement thereof.

Notwithstanding any provisions for debt limitation or majority protest as in this section provided, if, after the giving of such reasonable notice by publication and posting and the holding of such public hearing as the legislative body of any such chartered county, chartered city or chartered city and county shall have prescribed, such legislative body by no less than a four-fifths vote of all members thereof, finds and determines that the public convenience and necessity require such improvements or acquisitions, such debt limitation and majority protest provisions shall not apply.

Nothing contained in this section shall require the legislative body of any such city, county, or city and county to prepare or to cause to be prepared, hear, notice for hearing or report the hearing of any report as to any such proposed construction or acquisition or both. [*New section adopted November 5, 1974.*]

SEC. 19.5. [*Repealed November 6, 1962.*]

SEC. 20. [*Repealed November 6, 1962.*]

SEC. 21. [*Repealed November 6, 1962.*]

ARTICLE XVII. [*Repealed June 8, 1976.*]

ARTICLE XVIII. [*Repealed November 3, 1970. See Article XVIII, below.*]

ARTICLE XVIII*

AMENDING AND REVISING THE CONSTITUTION

SECTION 1. [*Repealed November 3, 1970. See Section 1, below.*]

[*By Legislature*]

SEC. 1. The Legislature by rollcall vote entered in the journal, two-thirds of the membership of each house concurring, may propose an amendment or revision of the Constitution and in the same manner may amend or withdraw its proposal. Each amendment shall be so prepared and submitted that it can be voted on separately. [*New section adopted November 3, 1970.*]

SEC. 2. [*Repealed November 3, 1970. See Section 2, below.*]

[*Constitutional Convention*]

SEC. 2. The Legislature by rollcall vote entered in the journal, two-thirds of the membership of each house concurring, may submit at a general election the question whether to call a convention to revise the Constitution. If the majority vote yes on that question, within 6 months the Legislature shall provide for the convention. Delegates to a constitutional convention shall be voters elected from districts as nearly equal in population as may be practicable. [*New section adopted November 3, 1970.*]

[*Initiatives*]

SEC. 3. The electors may amend the Constitution by initiative. [*New section adopted November 3, 1970.*]

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* New Article XVIII adopted November 3, 1970.

[*Effective Date: Conflict*]

SEC. 4. A proposed amendment or revision shall be submitted to the electors and if approved by a majority of votes thereon takes effect the day after the election unless the measure provides otherwise. If provisions of 2 or more measures approved at the same election conflict, those of the measure receiving the highest affirmative vote shall prevail. [*New section adopted November 3, 1970.*]

ARTICLE XIX*

MOTOR VEHICLE REVENUES

SECTION 1. [*Repealed June 4, 1974. See Section 1, below.*]

[*Use of Fuel Taxes*]

SECTION 1. Revenues from taxes imposed by the State on motor vehicle fuels for use in motor vehicles upon public streets and highways, over and above the costs of collection and any refunds authorized by law, shall be used for the following purposes:

(a) The research, planning, construction, improvement, maintenance, and operation of public streets and highways (and their related public facilities for nonmotorized traffic), including the mitigation of their environmental effects, the payment for property taken or damaged for such purposes, and the adminstrative costs necessarily incurred in the foregoing purposes.

(b) The research, planning, construction, and improvement of exclusive public mass transit guideways (and their related fixed facilities), including the mitigation of their environmental effects, the payment for property taken or damaged for such purposes, the administrative costs necessarily incurred in the foregoing purposes, and the maintenance of the structures and the immediate right-of-way for the public mass transit guideways, but excluding the maintenance and operating costs for mass transit power systems and mass transit passenger facilities, vehicles, equipment, and services. [*New section adopted June 4, 1974.*]

SEC. 2. [*Repealed June 4, 1974. See Section 2, below.*]

[*Use of Motor Vehicle Fees and Taxes*]

SEC. 2. Revenues from fees and taxes imposed by the State upon vehicles or their use or operation, over and above the costs of collection and any refunds authorized by law, shall be used for the following purposes:

(a) The state administration and enforcement of laws regulating the use, operation, or registration of vehicles used upon the public streets and highways of this State, including the enforcement of traffic and vehicle

* Former Article XXVI, as renumbered June 8, 1976.

laws by state agencies and the mitigation of the environmental effects of motor vehicle operation due to air and sound emissions.

(b) The purposes specified in Section 1 of this article. [*New section adopted June 4, 1974.*]

SEC. 3. [*Repealed June 4, 1974. See Section 3, below.*]

[*Appropriations by the Legislature—Regulation of Expenditures, Etc.*]

SEC. 3. The Legislature shall provide for the allocation of the revenues to be used for the purposes specified in Section 1 of this article in a manner which ensures the continuance of existing statutory allocation formulas for cities, counties, and areas of the State, until it determines that another basis for an equitable, geographical, and jurisdictional distribution exists; provided that, until such determination is made, any use of such revenues for purposes specified in subdivision (b) of Section 1 of this article by or in a city, county, or area of the State shall be included within the existing statutory allocations to, or for expenditure in, that city, county, or area. Any future statutory revisions shall provide for the allocation of these revenues, together with other similar revenues, in a manner which gives equal consideration to the transportation needs of all areas of the State and all segments of the population consistent with the orderly achievement of the adopted local, regional, and statewide goals for ground transportation in local general plans, regional transportation plans, and the California Transportation Plan. [*New section adopted June 4, 1974.*]

SEC. 4. [*Repealed June 4, 1974. See Section 4, below.*]

[*Authorization and Approval for Expenditures*]

SEC. 4. Revenues allocated pursuant to Section 3 may not be expended for the purposes specified in subdivision (b) of Section 1, except for research and planning, until such use is approved by a majority of the votes cast on the proposition authorizing such use of such revenues in an election held throughout the county or counties, or a specified area of a county or counties, within which the revenues are to be expended. The Legislature may authorize the revenues approved for allocation or expenditure under this section to be pledged or used for the payment of principal and interest on voter-approved bonds issued for the purposes specified in subdivision (b) of Section 1. [*New section adopted June 4, 1974.*]

[*Expenditures for Payment of Bonds*]

SEC. 5. The Legislature may authorize up to 25 percent of the revenues available for expenditure by any city or county, or by the State, for the purposes specified in subdivision (a) of Section 1 of this article to be pledged or used for the payment of principal and interest on voter-approved bonds issued for such purposes. [*New section adopted June 4, 1974.*]

SEC. 6. [*Repealed November 3, 1998. See Section 6, below.*]

[*Loans to State General Fund*]

SEC. 6. The tax revenues designated under this article may be loaned to the General Fund only if one of the following conditions is imposed:

(a) That any amount loaned is to be repaid in full to the fund from which it was borrowed during the same fiscal year in which the loan was made, except that repayment may be delayed until a date not more than 30 days after the date of enactment of the budget bill for the subsequent fiscal year.

(b) That any amount loaned is to be repaid in full to the fund from which it was borrowed within three fiscal years from the date on which the loan was made and one of the following has occurred:

(1) The Governor has proclaimed a state of emergency and declares that the emergency will result in a significant negative fiscal impact to the General Fund.

(2) The aggregate amount of General Fund revenues for the current fiscal year, as projected by the Governor in a report to the Legislature in May of the current fiscal year, is less than the aggregate amount of General Fund revenues for the previous fiscal year, adjusted for the change in the cost of living and the change in population, as specified in the budget submitted by the Governor pursuant to Section 12 of Article IV in the current fiscal year.

(c) Nothing in this section prohibits the Legislature from authorizing, by statute, loans to local transportation agencies, cities, counties, or cities and counties, from funds that are subject to this article, for the purposes authorized under this article. Any loan authorized as described by this subdivision shall be repaid, with interest at the rate paid on money in the Pooled Money Investment Account, or any successor to that account, during the period of time that the money is loaned, to the fund from which it was borrowed, not later than four years after the date on which the loan was made. [*New section adopted November 3, 1998.*]

[*Scope of Article*]

SEC. 7. This article shall not affect or apply to fees or taxes imposed pursuant to the Sales and Use Tax Law or the Vehicle License Fee Law, and all amendments and additions now or hereafter made to such statutes. [*New section adopted June 4, 1974.*]

[*Use of Excess Lands for Parks and Recreation*]

SEC. 8. Notwithstanding Sections 1 and 2 of this article, any real property acquired by the expenditure of the designated tax revenues by an entity other than the State for the purposes authorized in those sections,

but no longer required for such purposes, may be used for local public park and recreational purposes. [*New section adopted June 8, 1976.*]

[*Transfer of Surplus State Property Located in Coastal Zone*]

SEC. 9. Notwithstanding any other provision of this Constitution, the Legislature, by statute, with respect to surplus state property acquired by the expenditure of tax revenues designated in Sections 1 and 2 and located in the coastal zone, may authorize the transfer of such property, for a consideration at least equal to the acquisition cost paid by the state to acquire the property, to the Department of Parks and Recreation for state park purposes, or to the Department of Fish and Game for the protection and preservation of fish and wildlife habitat, or to the Wildlife Conservation Board for purposes of the Wildlife Conservation Law of 1947, or to the State Coastal Conservancy for the preservation of agricultural lands.

As used in this section, ''coastal zone'' means ''coastal zone'' as defined by Section 30103 of the Public Resources Code as such zone is described on January 1, 1977. [*New section adopted November 7, 1978.*]

ARTICLE XIX A *

LOANS FROM THE PUBLIC TRANSPORTATION ACCOUNT OR LOCAL TRANSPORTATION FUNDS

[*Loans to State General Fund*]

SECTION 1. The funds in the Public Transportation Account in the State Transportation Fund, or any successor to that account, may be loaned to the General Fund only if one of the following conditions is imposed:

(a) That any amount loaned is to be repaid in full to the account during the same fiscal year in which the loan was made, except that repayment may be delayed until a date not more than 30 days after the date of enactment of the budget bill for the subsequent fiscal year.

(b) That any amount loaned is to be repaid in full to the account within three fiscal years from the date on which the loan was made and one of the following has occurred:

(1) The Governor has proclaimed a state of emergency and declares that the emergency will result in a significant negative fiscal impact to the General Fund.

(2) The aggregate amount of General Fund revenues for the current fiscal year, as projected by the Governor in a report to the Legislature in May of the current fiscal year, is less than the aggregate amount of General Fund revenues for the previous fiscal year, as specified in the budget submitted by the Governor pursuant to Section 12 of Article IV in the current fiscal year. [*New section adopted November 3, 1998.*]

* New Article XIX A adopted November 3, 1998.

[*"Local Transportation Fund"*]

SEC. 2. (a) As used in this section, a "local transportation fund" is a fund created under Section 29530 of the Government Code, or any successor to that statute.

(b) All local transportation funds are hereby designated trust funds.

(c) A local transportation fund that has been created pursuant to law may not be abolished.

(d) Money in a local transportation fund shall be allocated only for the purposes authorized under Article 11 (commencing with Section 29530) of Chapter 2 of Division 3 of Title 3 of the Government Code and Chapter 4 (commencing with Section 99200) of Part 11 of Division 10 of the Public Utilities Code, as those provisions existed on October 1, 1997. Neither the county nor the Legislature may authorize the expenditure of money in a local transportation fund for purposes other than those specified in this subdivision. [*New section adopted November 3, 1998.*]

ARTICLE XX

MISCELLANEOUS SUBJECTS

[*Sacramento County Consolidation With City or Cities*]

SEC. 1. Notwithstanding the provisions of Section 6 of Article XI, the County of Sacramento and all or any of the cities within the County of Sacramento may be consolidated as a charter city and county as provided by statute, with the approval of a majority of the electors of the county voting on the question of such consolidation and upon such other vote as the Legislature may prescribe in such statute. The charter City and County of Sacramento shall be a charter city and a charter county. Its charter city powers supersede conflicting charter county powers. [*New section adopted June 4, 1974.*]

[*Protection of Homesteads*]

SEC. 1.5. The Legislature shall protect, by law, from forced sale a certain portion of the homestead and other property of all heads of families. [*New section adopted June 8, 1976.*]

[*Leland Stanford Junior University—Henry E. Huntington Library and Art Gallery*]

SEC. 2. Except for tax exemptions provided in Article XIII, the rights, powers, privileges, and confirmations conferred by Sections 10† and 15† of Article IX in effect on January 1, 1973, relating to Stanford University and the Huntington Library and Art Gallery, are continued in effect. [*Former Section 6, as renumbered June 8, 1976.*]

† Sections 10 and 15 of Article IX repealed November 5, 1974.

[*Oath of Office*]

SEC. 3. Members of the Legislature, and all public officers and employees, executive, legislative, and judicial, except such inferior officers and employees as may be by law exempted, shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation:

''I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

''And I do further swear (or affirm) that I do not advocate, nor am I a member of any party or organization, political or otherwise, that now advocates the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means; that within the five years immediately preceding the taking of this oath (or affirmation) I have not been a member of any party or organization, political or otherwise, that advocated the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means except as follows:

_____

(If no affiliations, write in the words ''No Exceptions'')

and that during such time as I hold the office of_____

(name of office)

I will not advocate nor become a member of any party or organization, political or otherwise, that advocates the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means.''

And no other oath, declaration, or test, shall be required as a qualification for any public office or employment.

''Public officer and employee'' includes every officer and employee of the State, including the University of California, every county, city, city and county, district, and authority, including any department, division, bureau, board, commission, agency, or instrumentality of any of the foregoing. [*As amended November 4, 1952.*]

SEC. 3.5. [*Repealed November 3, 1970.*]

[*Franchises*]

SEC. 4. The Legislature shall not pass any laws permitting the leasing or alienation of any franchise, so as to relieve the franchise or property held thereunder from the liabilities of the lessor or grantor, lessee, or

grantee, contracted or incurred in the operation, use, or enjoyment of such franchise, or any of its privileges. [*Former Section 7, as renumbered June 8, 1976.*]

SEC. 5. [*Repealed June 8, 1976. See Section 5, below.*]

[*Laws Concerning Corporations*]

SEC. 5. All laws now in force in this State concerning corporations and all laws that may be hereafter passed pursuant to this section may be altered from time to time or repealed. [*Former Section 24, as renumbered June 8, 1976.*]

SEC. 6. [*Renumbered Section 2 June 8, 1976. See Section 6, below.*]

[*Reduction in Legislator's Term of Office—Retirement Benefits, Etc.*]

SEC. 6. Any legislator whose term of office is reduced by operation of the amendment to subdivision (a) of Section 2 of Article IV adopted by the people in 1972 shall, notwithstanding any other provision of this Constitution, be entitled to retirement benefits and compensation as if the term of office had not been so reduced. [*Former Section 25, as renumbered June 8, 1976.*]

[*Constitutional Officers—Number of Terms*]

SEC. 7. The limitations on the number of terms prescribed by Section 2 of Article IV, Sections 2 and 11 of Article V, Section 2 of Article IX, and Section 17 of Article XIII apply only to terms to which persons are elected or appointed on or after November 6, 1990, except that an incumbent Senator whose office is not on the ballot for the general election on that date may serve only one additional term. Those limitations shall not apply to any unexpired term to which a person is elected or appointed if the remainder of the term is less than half of the full term. [*New section adopted November 6, 1990. Initiative measure.*]

SEC. 8. [*Renumbered Section 21 of Article I and amended November 5, 1974.*]

SEC. 9. [*Repealed November 3, 1970.*]

SEC. 10. [*Repealed June 8, 1976.*]

SEC. 11. [*Repealed June 8, 1976.*]

SEC. 12. [*Repealed November 3, 1970.*]

SEC. 13. [*Repealed November 3, 1970.*]

SEC. 14. [*Repealed November 3, 1970.*]

SEC. 15. [*Repealed June 8, 1976.*]

SEC. 16. [*Repealed November 7, 1972.*]

SEC. 17. [*Repealed June 8, 1976.*]

SEC. 17½. [*Repealed June 8, 1976.*]

SEC. 18. [*Renumbered Section 8 of Article I and amended November 5, 1974.*]

SEC. 19. [*Repealed June 8, 1976.*]

SEC. 20. [*Repealed June 8, 1976.*]

SEC. 21. [*Repealed June 8, 1976.*]

[*Liquor Control*]

SEC. 22. The State of California, subject to the internal revenue laws of the United States, shall have the exclusive right and power to license and regulate the manufacture, sale, purchase, possession and transportation of alcoholic beverages within the State, and subject to the laws of the United States regulating commerce between foreign nations and among the states shall have the exclusive right and power to regulate the importation into and exportation from the State, of alcoholic beverages. In the exercise of these rights and powers, the Legislature shall not constitute the State or any agency thereof a manufacturer or seller of alcoholic beverages.

[*Licensed Premises—Types of Licenses*]

All alcoholic beverages may be bought, sold, served, consumed and otherwise disposed of in premises which shall be licensed as provided by the Legislature. In providing for the licensing of premises, the Legislature may provide for the issuance of, among other licenses, licenses for the following types of premises where the alcoholic beverages specified in the licenses may be sold and served for consumption upon the premises:

(a) For bona fide public eating places, as defined by the Legislature.

(b) For public premises in which food shall not be sold or served as in a bona fide public eating place, but upon which premises the Legislature may permit the sale or service of food products incidental to the sale and service of alcoholic beverages. No person under the age of 21 years shall be permitted to enter and remain in any such premises without lawful business therein.

(c) For public premises for the sale and service of beers alone.

(d) Under such conditions as the Legislature may impose, for railroad dining or club cars, passenger ships, common carriers by air, and bona fide clubs after such clubs have been lawfully operated for not less than one year.

[*Service or Sale to Minors*]

The sale, furnishing, giving, or causing to be sold, furnished, or giving away of any alcoholic beverage to any person under the age of 21 years is hereby prohibited, and no person shall sell, furnish, give, or cause to be

sold, furnished, or given away any alcoholic beverage to any person under the age of 21 years, and no person under the age of 21 years shall purchase any alcoholic beverage.

[*Director of Alcoholic Beverage Control*]

The Director of Alcoholic Beverage Control shall be the head of the Department of Alcoholic Beverage Control, shall be appointed by the Governor subject to confirmation by a majority vote of all of the members elected to the Senate, and shall serve at the pleasure of the Governor. The director may be removed from office by the Governor, and the Legislature shall have the power, by a majority vote of all members elected to each house, to remove the director from office for dereliction of duty or corruption or incompetency. The director may appoint three persons who shall be exempt from civil service, in addition to the person he is authorized to appoint by Section 4 of Article XXIV.

[*Department of Alcoholic Beverage Control—Powers—Duties*]

The Department of Alcoholic Beverage Control shall have the exclusive power, except as herein provided and in accordance with laws enacted by the Legislature, to license the manufacture, importation and sale of alcoholic beverages in this State, and to collect license fees or occupation taxes on account thereof. The department shall have the power, in its discretion, to deny, suspend or revoke any specific alcoholic beverages license if it shall determine for good cause that the granting or continuance of such license would be contrary to public welfare or morals, or that a person seeking or holding a license has violated any law prohibiting conduct involving moral turpitude. It shall be unlawful for any person other than a licensee of said department to manufacture, import or sell alcoholic beverages in this State.

[*Alcoholic Beverage Control Appeals Board*]

The Alcoholic Beverage Control Appeals Board shall consist of three members appointed by the Governor, subject to confirmation by a majority vote of all of the members elected to the Senate. Each member, at the time of his initial appointment, shall be a resident of a different county from the one in which either of the other members resides. The members of the board may be removed from office by the Governor, and the Legislature shall have the power, by a majority vote of all members elected to each house, to remove any member from office for dereliction of duty or corruption or incompetency.

[*Appeals—Reviews—Reversals*]

When any person aggrieved thereby appeals from a decision of the department ordering any penalty assessment, issuing, denying, transferring, suspending or revoking any license for the manufacture, importation, or

sale of alcoholic beverages, the board shall review the decision subject to such limitations as may be imposed by the Legislature. In such cases, the board shall not receive evidence in addition to that considered by the department. Review by the board of a decision of the department shall be limited to the questions whether the department has proceeded without or in excess of its jurisdiction, whether the department has proceeded in the manner required by law, whether the decision is supported by the findings, and whether the findings are supported by substantial evidence in the light of the whole record. In appeals where the board finds that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before the department it may enter an order remanding the matter to the department for reconsideration in the light of such evidence. In all other appeals the board shall enter an order either affirming or reversing the decision of the department. When the order reverses the decision of the department, the board may direct the reconsideration of the matter in the light of its order and may direct the department to take such further action as is specially enjoined upon it by law, but the order shall not limit or control in any way the discretion vested by law in the department. Orders of the board shall be subject to judicial review upon petition of the director or any party aggrieved by such order.

[*Removal of Director or Board Members*]

A concurrent resolution for the removal of either the director or any member of the board may be introduced in the Legislature only if five Members of the Senate, or 10 Members of the Assembly, join as authors.

[*Licenses—Regulation—Fees*]

Until the Legislature shall otherwise provide, the privilege of keeping, buying, selling, serving, and otherwise disposing of alcoholic beverages in bona fide hotels, restaurants, cafes, cafeterias, railroad dining or club cars, passenger ships, and other public eating places, and in bona fide clubs after such clubs have been lawfully operated for not less than one year, and the privilege of keeping, buying, selling, serving, and otherwise disposing of beers on any premises open to the general public shall be licensed and regulated under the applicable provisions of the Alcoholic Beverage Control Act, insofar as the same are not inconsistent with the provisions hereof, and excepting that the license fee to be charged bona fide hotels, restaurants, cafes, cafeterias, railroad dining or club cars, passenger ships, and other public eating places, and any bona fide clubs after such clubs have been lawfully operated for not less than one year, for the privilege of keeping, buying, selling, or otherwise disposing of alcoholic beverages, shall be the amounts prescribed as of the operative date hereof, subject to the power of the Legislature to change such fees.

The State Board of Equalization shall assess and collect such excise taxes as are or may be imposed by the Legislature on account of the manufacture, importation and sale of alcoholic beverages in this State.

The Legislature may authorize, subject to reasonable restrictions, the sale in retail stores of alcoholic beverages contained in the original packages, where such alcoholic beverages are not to be consumed on the premises where sold; and may provide for the issuance of all types of licenses necessary to carry on the activities referred to in the first paragraph of this section, including, but not limited to, licenses necessary for the manufacture, production, processing, importation, exportation, transportation, wholesaling, distribution, and sale of any and all kinds of alcoholic beverages.

The Legislature shall provide for apportioning the amounts collected for license fees or occupation taxes under the provisions hereof between the State and the cities, counties and cities and counties of the State, in such manner as the Legislature may deem proper.

All constitutional provisions and laws inconsistent with the provisions hereof are hereby repealed.

The provisions of this section shall be self-executing, but nothing herein shall prohibit the Legislature from enacting laws implementing and not inconsistent with such provisions.

This amendment shall become operative on January 1, 1957. [*As amended November 6, 1956. Operative January 1, 1957.*]

[*State Colleges—Speaker, Member of Governing Body*]

SEC. 23. Notwithstanding any other provision of this Constitution, the Speaker of the Assembly shall be an ex officio member, having equal rights and duties with the nonlegislative members, of any state agency created by the Legislature in the field of public higher education which is charged with the management, administration, and control of the State College System of California. [*New section adopted November 3, 1970.*]

SEC. 24. [*Renumbered Section 5 June 8, 1976.*]

SEC. 25. [*Renumbered Section 6 June 8, 1976.*]

ARTICLE XXI*

REAPPORTIONMENT OF SENATE, ASSEMBLY, CONGRESSIONAL, AND BOARD OF EQUALIZATION DISTRICTS

[*Reapportionment Following National Census*]

SECTION 1. In the year following the year in which the national census is taken under the direction of Congress at the beginning of each decade, the Legislature shall adjust the boundary lines of the Senatorial, Assembly, Congressional, and Board of Equalization districts in conformance with the following standards:

[*Standards*]

(a) Each member of the Senate, Assembly, Congress, and the Board of Equalization shall be elected from a single-member district.

(b) The population of all districts of a particular type shall be reasonably equal.

(c) Every district shall be contiguous.

(d) Districts of each type shall be numbered consecutively commencing at the northern boundary of the State and ending at the southern boundary.

(e) The geographical integrity of any city, county, or city and county, or of any geographical region shall be respected to the extent possible without violating the requirements of any other subdivision of this section. [*New section adopted June 3, 1980.*]

ARTICLE XXII. [*Repealed June 6, 1972.*]

ARTICLE XXIII. [*Repealed June 8, 1976.*]

ARTICLE XXIV. [*Repealed June 8, 1976.*]

ARTICLE XXV. [*Repealed November 8, 1949. Initiative measure.*]

ARTICLE XXVI. [*Renumbered Article XIX June 8, 1976.*]

ARTICLE XXVII. [*Repealed November 3, 1970.*]

ARTICLE XXVIII. [*Repealed November 5, 1974.*]

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* New Article XXI adopted June 3, 1980.

ARTICLE XXXIV*

PUBLIC HOUSING PROJECT LAW

[*Approval of Low Rent Housing Projects by Electors*]

SECTION 1. No low rent housing project shall hereafter be developed, constructed, or acquired in any manner by any state public body until, a majority of the qualified electors of the city, town or county, as the case may be, in which it is proposed to develop, construct, or acquire the same, voting upon such issue, approve such project by voting in favor thereof at an election to be held for that purpose, or at any general or special election.

[*''Low Rent Housing Project''*]

For the purposes of this article the term ''low rent housing project'' shall mean any development composed of urban or rural dwellings, apartments or other living accommodations for persons of low income, financed in whole or in part by the Federal Government or a state public body or to which the Federal Government or a state public body extends assistance by supplying all or part of the labor, by guaranteeing the payment of liens, or otherwise. For the purposes of this Article only there shall be excluded from the term ''low rent housing project'' any such project where there shall be in existence on the effective date hereof, a contract for financial assistance between any state public body and the Federal Government in respect to such project.

[*''Persons of Low Income''*]

For the purposes of this Article only ''persons of low income'' shall mean persons or families who lack the amount of income which is necessary (as determined by the state public body developing, constructing, or acquiring the housing project) to enable them, without financial assistance, to live in decent, safe and sanitary dwellings, without overcrowding.

[*''State Public Body''*]

For the purposes of this Article the term ''state public body'' shall mean this State, or any city, city and county, county, district, authority, agency, or any other subdivision or public body of this State.

[*''Federal Government''*]

For the purposes of this Article the term ''Federal Government'' shall mean the United States of America, or any agency or instrumentality, corporate or otherwise, of the United States of America. [*New section adopted November 7, 1950. Initiative measure.*]

* New article adopted November 7, 1950. Initiative measure.

[*Self-executing Provisions*]

SECTION 2. The provisions of this Article shall be self-executing but legislation not in conflict herewith may be enacted to facilitate its operation. [*New section adopted November 7, 1950. Initiative measure.*]

[*Constitutionality of Article*]

SECTION 3. If any portion, section or clause of this Article, or the application thereof to any person or circumstance, shall for any reason be declared unconstitutional or held invalid, the remainder of this Article, or the application of such portion, section or clause to other persons or circumstances, shall not be affected thereby. [*New section adopted November 7, 1950. Initiative measure.*]

[*Scope of Article*]

SECTION 4. The provisions of this Article shall supersede all provisions of this Constitution and laws enacted thereunder in conflict therewith. [*New section adopted November 7, 1950. Initiative measure.*]

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MEASURES SUBMITTED TO VOTE OF ELECTORS
Primary Election, June 2, 1998

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221. **Subordinate Judicial Officers. Discipline.** (Statutes 1996, Resolution Chapter 54, SCA 19)

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9. **Electric Utilities. Assessments. Bonds.**

SECRETARY OF STATE

I, BILL JONES, Secretary of State of the State of California, hereby certify, based on records on file in my office:

That pursuant to Government Code § 9755(d), the following are the results of all elections upon any initiative or referendum measures submitted to the electors of the State within the calendar year 1998.

The following laws were **adopted** by vote of the electors at the June 2, 1998, primary election:

Ballot Measures. Application. Legislative Constitutional Amendment.
(Senate Constitutional Amendment 18, Statutes of 1996, Resolution Chapter 34)

Courts. Superior and Municipal Court Consolidation. Legislative Constitutional Amendment. (Senate Constitutional Amendment 4, Statutes of 1996, Resolution Chapter 36)

Subordinate Judicial Officers. Discipline. Legislative Constitutional Amendment. (Senate Constitutional Amendment 19, Statutes of 1996, Resolution Chapter 54)

Murder. Peace Officer Victim. Sentence Credits. Legislative Initiative Amendment. (Assembly Bill 446, Statutes of 1997, Chapter 413)

Limiting Congressional Terms. Proposed U.S. Constitutional Amendment. Initiative Statute.

English Language in Public Schools. Initiative Statute.

The following proposed laws were **defeated** by vote of the electors at the June 2, 1998, primary election:

Political Contributions by Employees, Union Members, Foreign Entities. Initiative Statute.

State-Funded Design and Engineering Services. Initiative Constitutional Amendment.

Schools. Spending Limits on Administration. Initiative Statute.

The following laws were **adopted** by vote of the electors at the November 3, 1998, general election:

Class Size Reduction Kindergarten-University Public Education Facilities Bond Act of 1998.

Property Taxes: Contaminated Property. Legislative Constitutional Amendment.

Transportation: Funding. Legislative Constitutional Amendment.

Trapping Practices. Bans Use of Specified Traps and Animal Poisons. Initiative Statute.

Tribal-State Gaming Compacts. Tribal Casinos. Initiative Statute.

Criminal Law. Prohibition on Slaughter of Horses and Sale of Horsemeat for Human Consumption. Initiative Statute.

State and County Early Childhood Development Programs. Additional Tobacco Surtax. Initiative Constitutional Amendment and Statute.

Local Sales and Use Taxes-Revenue Sharing. Legislative Constitutional Amendment.

The following proposed laws were **defeated** by vote of the electors at the November 3, 1998, general election:

Partisan Presidential Primary Elections. Legislative Initiative Amendment.

Air Quality Improvement. Tax Credits. Initiative Statute.

Public Schools. Permanent Class Size Reduction. Parent-Teacher Councils. Teacher Credentialing. Pupil Suspension for Drug Possession. Chief Inspector's Office. Initiative Statute.

Electric Utilities. Assessments. Bonds. Initiative Statute.

IN WITNESS WHEREOF, I hereunto set my hand and affix the Great Seal of California, at Sacramento, this 19th day of June, 2002.

BILL JONES
Secretary of State

PROPOSITIONS SUBMITTED TO VOTE OF ELECTORS

Primary Election, June 2, 1998

MEASURES ADOPTED

CONSTITUTIONAL AMENDMENTS SUBMITTED BY LEGISLATURE

Number on ballot

219. **Ballot Measures. Application.** (Statutes 1996, Resolution Chapter 34, SCA 18)

[Approved by electors June 2, 1998.]

PROPOSED AMENDMENTS TO ARTICLES II, IV, AND XI

First—That Section 8 of Article II is amended by adding subdivisions (e) and (f), to read:

(e) An initiative measure may not include or exclude any political subdivision of the State from the application or effect of its provisions based upon approval or disapproval of the initiative measure, or based upon the casting of a specified percentage of votes in favor of the measure, by the electors of that political subdivision.

(f) An initiative measure may not contain alternative or cumulative provisions wherein one or more of those provisions would become law depending upon the casting of a specified percentage of votes for or against the measure.

Second—That Section 11 of Article II is amended to read:

SEC. 11. *(a)* Initiative and referendum powers may be exercised by the electors of each city or county under procedures that the Legislature shall provide. ~~This~~ *Except as provided in subdivisions (b) and (c), this* section does not affect a city having a charter.

(b) A city or county initiative measure may not include or exclude any part of the city or county from the application or effect of its provisions based upon approval or disapproval of the initiative measure, or based upon the casting of a specified percentage of votes in favor of the measure, by the electors of the city or county or any part thereof.

(c) A city or county initiative measure may not contain alternative or cumulative provisions wherein one or more of those provisions would become law depending upon the casting of a specified percentage of votes for or against the measure.

Third—That Section 8.5 is added to Article IV, to read:

SEC. 8.5. An act amending an initiative statute, an act providing for the issuance of bonds, or a constitutional amendment proposed by the Legislature and submitted to the voters for approval may not do either of the following:

(a) Include or exclude any political subdivision of the State from the application or effect of its provisions based upon approval or disapproval of the measure, or based upon the casting of a specified percentage of votes in favor of the measure, by the electors of that political subdivision.

(b) Contain alternative or cumulative provisions wherein one or more of those provisions would become law depending upon the casting of a specified percentage of votes for or against the measure.

Fourth—That Section 7.5 is added to Article XI, to read:

SEC. 7.5. (a) A city or county measure proposed by the legislative body of a city, charter city, county, or charter county and submitted to the voters for approval may not do either of the following:

(1) Include or exclude any part of the city, charter city, county, or charter county from the application or effect of its provisions based upon approval or disapproval of the city or county measure, or based upon the casting of a specified percentage of votes in favor of the measure, by the electors of the city, charter city, county, charter county, or any part thereof.

(2) Contain alternative or cumulative provisions wherein one or more of those provisions would become law depending upon the casting of a specified percentage of votes for or against the measure.

(b) "City or county measure," as used in this section, means an advisory question, proposed charter or charter amendment, ordinance, proposition for the issuance of bonds, or other question or proposition submitted to the voters of a city, or to the voters of a county at an election held throughout an entire single county.

Number on ballot

220. **Courts. Superior and Municipal Court Consolidation.** (Statutes 1996, Resolution Chapter 36, SCA 4)

[Approved by electors June 2, 1998.]

PROPOSED AMENDMENTS TO ARTICLES I AND VI

First—That Section 16 of Article I thereof is amended to read:

SEC. 16. Trial by jury is an inviolate right and shall be secured to all, but in a civil cause three-fourths of the jury may render a verdict. A jury may be waived in a criminal cause by the consent of both parties expressed in open court by the defendant and the defendant's counsel. In a civil cause a jury may be waived by the consent of the parties expressed as prescribed by statute.

In civil causes the jury shall consist of 12 persons or a lesser number agreed on by the parties in open court. In civil causes ~~in municipal or justice court~~ *other than causes within the appellate jurisdiction of the court of appeal* the Legislature may provide that the jury shall consist of eight persons or a lesser number agreed on by the parties in open court.

In criminal actions in which a felony is charged, the jury shall consist of 12 persons. In criminal actions in which a misdemeanor is charged, the jury shall consist of 12 persons or a lesser number agreed on by the parties in open court.

Second—That Section 1 of Article VI thereof is amended to read:

SEC. 1. The judicial power of this State is vested in the Supreme Court, courts of appeal, superior courts, and municipal courts ~~. All courts~~ *, all of which* are courts of record.

Third—That Section 4 of Article VI thereof is amended to read:

SEC. 4. In each county there is a superior court of one or more judges. The Legislature shall prescribe the number of judges and provide for the officers and employees of each superior court. If the governing body of each affected county

concurs, the Legislature may provide that one or more judges serve more than one superior court.

~~The county clerk is ex officio clerk of the superior court in the county.~~

In each superior court there is an appellate division. The Chief Justice shall assign judges to the appellate division for specified terms pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to promote the independence of the appellate division.

Fourth—That Section 5 of Article VI thereof is amended to read:

SEC. 5. (a) Each county shall be divided into municipal court districts as provided by statute, but a city may not be divided into more than one district. Each municipal court shall have one or more judges. Each municipal court district shall have no fewer than 40,000 residents; provided that each county shall have at least one municipal court district. The number of residents shall be determined as provided by statute.

(b) On the operative date of this subdivision, all existing justice courts shall become municipal courts, and the number, qualifications, and compensation of judges, officers, attachés, and employees shall continue until changed by the Legislature. Each judge of a part-time municipal court is deemed to have agreed to serve full time and shall be available for assignment by the Chief Justice for the balance of time necessary to comprise a full-time workload.

(c) The Legislature shall provide for the organization and prescribe the jurisdiction of municipal courts. It shall prescribe for each municipal court the number, qualifications, and compensation of judges, officers, and employees.

(d) Notwithstanding subdivision (a), any city in San Diego County may be divided into more than one municipal court district if the Legislature determines that unusual geographic conditions warrant such division.

(e) Notwithstanding subdivision (a), the municipal and superior courts shall be unified upon a majority vote of superior court judges and a majority vote of municipal court judges within the county. In those counties, there shall be only a superior court.

Fifth—That Section 6 of Article VI thereof is amended to read:

SEC. 6. The Judicial Council consists of the Chief Justice and one other judge of the Supreme Court, 3 judges of courts of appeal, 5 judges of superior courts, ~~and~~ 5 judges of municipal courts, *2 nonvoting court administrators, and such other nonvoting members as determined by the voting membership of the council,* each appointed by the Chief Justice for a ~~2-year~~ *3-year* term *pursuant to procedures established by the council* ; 4 members of the State Bar appointed by its governing body for ~~2-year~~ *3-year* terms; and one member of each house of the Legislature appointed as provided by the house. *Vacancies in the memberships on the Judicial Council otherwise designated for municipal court judges shall be filled by judges of the superior court in the case of appointments made when fewer than 10 counties have municipal courts.*

Council membership terminates if a member ceases to hold the position that qualified the member for appointment. A vacancy shall be filled by the appointing power for the remainder of the term.

The council may appoint an Administrative Director of the Courts, who serves at its pleasure and performs functions delegated by the council or the Chief Justice, other than adopting rules of court administration, practice and procedure.

To improve the administration of justice the council shall survey judicial business and make recommendations to the courts, make recommendations

annually to the Governor and Legislature, adopt rules for court administration, practice and procedure, ~~not inconsistent with statute,~~ and perform other functions prescribed by statute. *The rules adopted shall not be inconsistent with statute.*

The Chief Justice shall seek to expedite judicial business and to equalize the work of judges. The Chief Justice may provide for the assignment of any judge to another court but only with the judge's consent if the court is of lower jurisdiction. A retired judge who consents may be assigned to any court.

Judges shall report to the ~~Judicial Council~~ *council* as the Chief Justice directs concerning the condition of judicial business in their courts. They shall cooperate with the council and hold court as assigned.

Sixth—That Section 8 of Article VI thereof is amended to read:

SEC. 8. (a) The Commission on Judicial Performance consists of one judge of a court of appeal, one judge of a superior court, and one judge of a municipal court, each appointed by the Supreme Court; 2 members of the State Bar of California who have practiced law in this State for 10 years, each appointed by the Governor; and 6 citizens who are not judges, retired judges, or members of the State Bar of California, 2 of whom shall be appointed by the Governor, 2 by the Senate Committee on Rules, and 2 by the Speaker of the Assembly. Except as provided in ~~subdivision~~ *subdivisions* (b) *and (c)* , all terms are for 4 years. No member shall serve more than 2 4-year terms, or for more than a total of 10 years if appointed to fill a vacancy. *A vacancy in the membership on the Commission on Judicial Performance otherwise designated for a municipal court judge shall be filled by a judge of the superior court in the case of an appointment made when fewer than 10 counties have municipal courts.*

(b) Commission membership terminates if a member ceases to hold the position that qualified the member for appointment. A vacancy shall be filled by the appointing power for the remainder of the term. A member whose term has expired may continue to serve until the vacancy has been filled by the appointing power. Appointing powers may appoint members who are already serving on the commission prior to March 1, 1995, to a single 2-year term, but may not appoint them to an additional term thereafter.

~~(b)~~

(c) To create staggered terms among the members of the Commission on Judicial Performance, the following members shall be appointed, as follows:

(1) Two members appointed by the Supreme Court to a term commencing March 1, 1995, shall each serve a term of 2 years and may be reappointed to one full term.

(2) One attorney appointed by the Governor to a term commencing March 1, 1995, shall serve a term of 2 years and may be reappointed to one full term.

(3) One citizen member appointed by the Governor to a term commencing March 1, 1995, shall serve a term of 2 years and may be reappointed to one full term.

(4) One member appointed by the Senate Committee on Rules to a term commencing March 1, 1995, shall serve a term of 2 years and may be reappointed to one full term.

(5) One member appointed by the Speaker of the Assembly to a term commencing March 1, 1995, shall serve a term of 2 years and may be reappointed to one full term.

(6) All other members shall be appointed to full 4-year terms commencing March 1, 1995.

Seventh—That Section 10 of Article VI thereof is amended to read:

SEC. 10. The Supreme Court, courts of appeal, superior courts, and their judges have original jurisdiction in habeas corpus proceedings. Those courts also have original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition. *The appellate division of the superior court has original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition directed to the superior court in causes subject to its appellate jurisdiction.*

Superior courts have original jurisdiction in all *other* causes except those given by statute to other trial courts.

The court may make such comment on the evidence and the testimony and credibility of any witness as in its opinion is necessary for the proper determination of the cause.

Eighth—That Section 11 of Article VI thereof is amended to read:

SEC. 11. *(a)* The Supreme Court has appellate jurisdiction when judgment of death has been pronounced. With that exception courts of appeal have appellate jurisdiction when superior courts have original jurisdiction *in causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995,* and in other causes prescribed by statute. *When appellate jurisdiction in civil causes is determined by the amount in controversy, the Legislature may change the appellate jurisdiction of the courts of appeal by changing the jurisdictional amount in controversy.*

~~Superior Courts have~~

(b) Except as provided in subdivision (a), the appellate division of the superior court has appellate jurisdiction in causes prescribed by statute ~~that arise in municipal courts in their counties~~ .

(c) The Legislature may permit ~~appellate~~ courts *exercising appellate jurisdiction* to take evidence and make findings of fact when jury trial is waived or not a matter of right.

Ninth—That Section 16 of Article VI thereof is amended to read:

SEC. 16. (a) Judges of the Supreme Court shall be elected at large and judges of courts of appeal shall be elected in their districts at general elections at the same time and places as the Governor. Their terms are 12 years beginning the Monday after January 1 following their election, except that a judge elected to an unexpired term serves the remainder of the term. In creating a new court of appeal district or division the Legislature shall provide that the first elective terms are 4, 8, and 12 years.

~~(b) Judges of other~~

(b) (1) In counties in which there is no municipal court, judges of superior courts shall be elected in their counties at general elections except as otherwise necessary to meet the requirements of federal law. In the latter case the Legislature, by two-thirds vote of the membership of each house thereof, with the advice of judges within the affected court, may provide for their election by the system prescribed in subdivision (d), or by any other arrangement. The Legislature may provide that an unopposed incumbent's name not appear on the ballot.

(2) In counties in which there is one or more municipal court districts, judges of superior and municipal courts shall be elected in their counties or districts at general elections. The Legislature may provide that an unopposed incumbent's name not appear on the ballot.

(c) Terms of judges of superior courts are 6 years beginning the Monday after January 1 following their election. A vacancy shall be filled by election to

a full term at the next general election after the *second* January 1 following the vacancy, but the Governor shall appoint a person to fill the vacancy temporarily until the elected judge's term begins.

(d) Within 30 days before August 16 preceding the expiration of the judge's term, a judge of the Supreme Court or a court of appeal may file a declaration of candidacy to succeed to the office presently held by the judge. If the declaration is not filed, the Governor before September 16 shall nominate a candidate. At the next general election, only the candidate so declared or nominated may appear on the ballot, which shall present the question whether the candidate shall be elected. The candidate shall be elected upon receiving a majority of the votes on the question. A candidate not elected may not be appointed to that court but later may be nominated and elected.

The Governor shall fill vacancies in those courts by appointment. An appointee holds office until the Monday after January 1 following the first general election at which the appointee had the right to become a candidate or until an elected judge qualifies. A nomination or appointment by the Governor is effective when confirmed by the Commission on Judicial Appointments.

Electors of a county, by majority of those voting and in a manner the Legislature shall provide, may make this system of selection applicable to judges of superior courts.

Tenth—That Section 23 is added to Article VI thereof, to read:

SEC. 23. (a) The purpose of the amendments to Sections 1, 4, 5, 6, 8, 10, 11, and 16, of this article, and the amendments to Section 16 of Article I, approved at the June 2, 1998, primary election is to permit the Legislature to provide for the abolition of the municipal courts and unify their operations within the superior courts. Notwithstanding Section 8 of Article IV, the implementation of, and orderly transition under, the provisions of the measure adding this section may include urgency statutes that create or abolish offices or change the salaries, terms, or duties of offices, or grant franchises or special privileges, or create vested rights or interests, where otherwise permitted under this Constitution.

(b) When the superior and municipal courts within a county are unified, the judgeships in each municipal court in that county are abolished and the previously selected municipal court judges shall become judges of the superior court in that county. The term of office of a previously selected municipal court judge is not affected by taking office as a judge of the superior court. The 10-year membership or service requirement of Section 15 does not apply to a previously selected municipal court judge. Pursuant to Section 6, the Judicial Council may prescribe appropriate education and training for judges with regard to trial court unification.

(c) Except as provided by statute to the contrary, in any county in which the superior and municipal courts become unified, the following shall occur automatically in each preexisting superior and municipal court:

(1) Previously selected officers, employees, and other personnel who serve the court become the officers and employees of the superior court.

(2) Preexisting court locations are retained as superior court locations.

(3) Preexisting court records become records of the superior court.

(4) Pending actions, trials, proceedings, and other business of the court become pending in the superior court under the procedures previously applicable to the matters in the court in which the matters were pending.

(5) Matters of a type previously within the appellate jurisdiction of the superior court remain within the jurisdiction of the appellate division of the superior court.

(6) Matters of a type previously subject to rehearing by a superior court judge remain subject to rehearing by a superior court judge, other than the judge who originally heard the matter.

(7) Penal Code procedures that necessitate superior court review of, or action based on, a ruling or order by a municipal court judge shall be performed by a superior court judge other than the judge who originally made the ruling or order.

Eleventh—That if any provision of this measure or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this measure that can be given effect without the invalid provision or application, and to this end the provisions of this measure are severable.

Number on ballot

221. **Subordinate Judicial Officers. Discipline.** (Statutes 1996, Resolution Chapter 54, SCA 19)

[Approved by electors June 2, 1998.]

PROPOSED AMENDMENT TO ARTICLE VI

SEC. 18.1. The Commission on Judicial Performance shall exercise discretionary jurisdiction with regard to the oversight and discipline of subordinate judicial officers, according to the same standards, and subject to review upon petition to the Supreme Court, as specified in Section 18.

No person who has been found unfit to serve as a subordinate judicial officer after a hearing before the Commission on Judicial Performance shall have the requisite status to serve as a subordinate judicial officer.

This section does not diminish or eliminate the responsibility of a court to exercise initial jurisdiction to discipline or dismiss a subordinate judicial officer as its employee.

INITIATIVE AMENDMENT SUBMITTED BY LEGISLATURE

Number on ballot

222. **Murder. Peace Officer Victim. Sentence Credits.** (Statutes 1997, Chapter 413, AB 446)

[Approved by electors June 2, 1998.]

PROPOSED LAW

SECTION 1. Section 190 of the Penal Code, as amended by Chapter 609 of the Statutes of 1993, is amended to read:

190. (a) Every person guilty of murder in the first degree shall suffer death, confinement in the state prison for life without the possibility of parole, or confinement in the state prison for a term of 25 years to life. The penalty to be

applied shall be determined as provided in Sections 190.1, 190.2, 190.3, 190.4, and 190.5.

Except as provided in subdivision (b) ~~or (c)~~ *, (c), or (d)* , every person guilty of murder in the second degree shall suffer confinement in the state prison for a term of 15 years to life.

~~Except as provided in subdivision (b), Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce any minimum term of 15, 20, or 25 years in the state prison imposed pursuant to this section, but the person shall not otherwise be released on parole prior to that time.~~

(b) Except as provided in subdivision (c), every person guilty of murder in the second degree shall suffer confinement in the state prison for a term of 25 years to life if the victim was a peace officer, as defined in subdivision (a) of Section 830.1, subdivision (a) or (b) of Section 830.2, or Section 830.5, who was killed while engaged in the performance of his or her duties, and the defendant knew, or reasonably should have known, that the victim was such a peace officer engaged in the performance of his or her duties.

~~(b)~~ *(c)* Every person guilty of murder in the second degree shall suffer confinement in the state prison for a term of ~~25 years to~~ life *without the possibility of parole* if the victim was a peace officer, as defined in subdivision (a) of Section 830.1, subdivision (a) or (b) of Section 830.2, or Section 830.5, who was killed while engaged in the performance of his or her duties, and the defendant knew, or reasonably should have known, that the victim was such a peace officer engaged in the performance of his or her duties *, and any of the following facts has been charged and found true:*

(1) The defendant specifically intended to kill the peace officer.

(2) The defendant specifically intended to inflict great bodily injury, as defined in Section 12022.7, on a peace officer.

(3) The defendant personally used a dangerous or deadly weapon in the commission of the offense, in violation of subdivision (b) of Section 12022.

(4) The defendant personally used a firearm in the commission of the offense, in violation of Section 12022.5 .

~~Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not apply to reduce any minimum term of 25 years in the state prison when the person is guilty of murder in the second degree and the victim was a peace officer, as defined in this subdivision, and the person shall not be released prior to serving 25 years confinement.~~

~~(c)~~ *(d)* Every person guilty of murder in the second degree shall suffer confinement in the state prison for a term of 20 years to life if the killing was perpetrated by means of shooting a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict great bodily injury.

(e) Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 ~~shall~~ *does not* apply to reduce any minimum term of ~~20~~ ~~years in the state prison when the person is guilty of murder in the second degree and is subject to this subdivision, but the person shall not otherwise be released on parole prior to that time.~~ *a sentence imposed pursuant to this section. A person sentenced pursuant to this section may not be released on parole prior to serving the minimum term of confinement prescribed by this section.*

INITIATIVE STATUTES

Number on ballot

225. **Limiting Congressional Terms. Proposed U.S. Constitutional Amendment.**

[Submitted by the initiative and approved by electors June 2, 1998.]

PROPOSED LAW

Whereas, Career politicians dominating Congress have a conflict of interest which prevents them from enacting meaningful term limits and making Congress what the Founders intended, the branch of government closest to the People; and

Whereas, Career politicians, while refusing to heed the desire of the People for meaningful term limits, amassed a nearly five trillion dollar national debt by not only voting year after year to spend far more than they have taken in, but also by voting to dramatically increase their own pay; also provided lavish million-dollar pensions for themselves and granted themselves numerous other privileges at the expense of the People; and

Whereas, Such irresponsible actions on the part of career politicians have mortgaged the future of not only every American citizen, but also their children and grandchildren; and

Whereas, The abuse of power, the corruption, and the appearance of corruption brought about by political careerism is ultimately destructive to representative government by making Congress increasingly distant from the People; and

Whereas, The President of the United States is limited to two terms in office by the 22nd Amendment to the U.S. Constitution, and governors in 40 states are limited by state laws to two terms or less, and

Whereas, Voters have established term limits for more than 2,000 state legislators, as well as more than 17,000 local officials across the nation, including state legislators and statewide elective officeholders in California, and

Whereas, In 1992, the People of the State of California enacted, by an overwhelming majority, an amendment to the state law limiting service in the U.S. House of Representatives to three terms and in the U.S. Senate to two terms, which state-imposed congressional term limits were ruled unconstitutional by the U.S. Supreme Court, and

Whereas, Congress has ignored the desire of the People for meaningful term limits by refusing to pass an amendment instituting congressional term limits, and by proposing exceedingly long limits for its own members; and

Whereas, It is the People themselves, not Congress, who should set term limits; and

Whereas, The People have a sovereign right and a compelling interest in the creation and preserving of a citizen Congress that will more effectively protect their freedom and prosperity, which interest and right may not be as effectively served in any way other than that proposed by this initiative; and

Whereas, With foresight and wisdom our Founders, under Article V of the U.S. Constitution, did provide the People with a procedure by which to circumvent congressional self-interest, by which procedure the People may call a convention to propose amendments to the U.S. Constitution when two-thirds or 34 states expressly call for such a convention; and

Whereas, Amendments proposed by such a convention would become part of the U.S. Constitution upon the ratification of three-fourths of the states (38); and

Whereas, The People of the State of California desire to amend the U.S. Constitution to establish term limits on Congress to ensure representation in Congress by true citizen lawmakers;

Be it enacted by the People of the State of California:

SECTION 1. Article 1.2 (commencing with Section 10204.1) is added to Chapter 2 of Part 2 of Division 10 of the Elections Code, to read:

Article 1.2. The Congressional Term Limits Act

10204.1. It is the official position of the People of the State of California that our elected officials should vote to enact, by amendment to the U.S. Constitution, congressional term limits which are not longer than three terms in the U.S. House of Representatives, nor two terms in the U.S. Senate.

10204.2. It is the will of the People of the State of California that application be made to Congress on behalf of the People of California and the California Legislature that Congress adopt the following amendment to the U.S. Constitution:

Congressional Term Limits Amendment

Section A. No person may serve in the office of U.S. Representative for more than three terms, but upon ratification of the Term Limits Amendment no person who has held the office of U.S. Representative or who then holds the office may serve for more than two additional terms.

Section B. No person may serve in the office of U.S. Senator for more than two terms, but upon ratification of the Term Limits Amendment no person who has held the office of U.S. Senator or who then holds the office may serve more than one additional term.

Section C. This article shall have no time limit within which it must be ratified by the legislatures of three-fourths of the several states.

10204.3. The California Legislature, due to the desire of the People of the State of California to establish term limits on the Congress of the United States, is hereby instructed to make the following application to Congress, pursuant to its power under Article V of the U.S. Constitution:

"We, the People and Legislature of the State of California, due to our desire to establish term limits on the Congress of the United States, hereby make application to Congress, pursuant to our power under Article V of the U.S. Constitution, to call a convention for proposing amendments to the Constitution."

10204.4. Each state legislator is hereby instructed to use all of his or her delegated powers to pass the Article V application to Congress set forth in Section 10204.3, and to ratify, if proposed by Congress, the Congressional Term Limits Amendment set forth in Section 10204.2.

10204.5. (a) As provided in this act, at each election for the office of United States Representative, United States Senator, State Senator, or Member of the Assembly, the ballot shall inform voters regarding any incumbent or nonincumbent candidate's failure to support the above proposed Congressional Term Limits Amendment.

(b) All primary, general, and special election ballots shall have the information "DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS" printed adjacent to the name of any State Senator or Member of the Assembly

who during the regular legislative session following the most recent general election:

(1) Failed to vote in favor of the application set forth in Section 10204.3 when brought to a vote; or

(2) Failed to second the application set forth in Section 10204.3 if it lacked for a second; or

(3) Failed to vote in favor of all votes bringing the application set forth in Section 10204.3 before any committee or subcommittee upon which he or she served in the respective houses; or

(4) Failed to propose or otherwise bring to a vote of the full legislative body the application set forth in Section 10204.3 if it otherwise lacked a legislator who so proposed or brought to a vote of the full legislative body the application set forth above; or

(5) Failed to vote against any attempt to delay, table, or otherwise prevent a vote by the full legislative body of the application set forth in Section 10204.3; or

(6) Failed in any way to ensure that all votes on the application set forth in Section 10204.3 were recorded and made available to the public; or

(7) Failed to vote against any change, addition, or modification to the application set forth in Section 10204.3; or

(8) Failed to vote in favor of the amendment set forth in Section 10204.2 if it was sent to the states for ratification; or

(9) Failed to vote against any term limits amendment other than the proposed amendment set forth in Section 10204.2, if such an amendment was sent to the states for ratification.

(c) The information "DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS" as required by any of paragraphs (1) to (7), inclusive, of subdivision (b) shall not appear adjacent to the names of candidates for the State Senate or Assembly if the State of California has made the application to Congress for a convention for proposing amendments to the U.S. Constitution pursuant to this article and such application has not been withdrawn.

(d) The information "DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS" as required by either of paragraphs (8) and (9) of subdivision (b), shall not appear adjacent to the names of candidates for the State Senate or Assembly if the Congressional Term Limits Amendment set forth in Section 10204.2 has been submitted to the states for ratification and ratified by the California Legislature, or the proposed Congressional Term Limits Amendment set forth in Section 10204.2 has become part of the U.S. Constitution.

10204.6. Each member of the California congressional delegation is hereby instructed to use all of his or her delegated powers to pass the Congressional Term Limits Amendment set forth in Section 10204.2.

10204.7. All primary, general, and special election ballots shall have the information "DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS" printed adjacent to the name of any U.S. Representative or U.S. Senator who during the first 12 months of the regular legislative session following the most recent general election:

(a) Failed to vote in favor of the proposed Congressional Term Limits Amendment set forth in Section 10204.2 when brought to a vote; or

(b) Failed to second the proposed Congressional Term Limits Amendment set forth in Section 10204.2 if it lacked for a second before any proceeding of the legislative body; or

(c) Failed to propose or otherwise bring to a vote of the full legislative body the proposed Congressional Term Limits Amendment set forth in Section 10204.2 if it otherwise lacked a legislator who so proposed or brought to a vote of the full legislative body the proposed Congressional Term Limits Amendment set forth in Section 10204.2; or

(d) Failed to vote in favor of all votes bringing the proposed Congressional Term Limits Amendment set forth in Section 10204.2 before any committee or subcommittee upon which he or she served in the respective houses; or

(e) Failed to vote against or reject any attempt to delay, table, or otherwise prevent a vote by the full legislative body of the proposed Congressional Term Limits Amendment set forth in Section 10204.2; or

(f) Failed to vote against any term limits proposal other than the proposed Congressional Term Limits Amendment set forth in Section 10204.2; or

(g) Sponsored or co-sponsored any proposed Constitutional amendment or law that proposes term limits other than those in the proposed Congressional Term Limits Amendment set forth in Section 10204.2; or

(h) Failed to ensure that all votes on the proposed Constitutional Term Limits Amendment set forth in Section 10204.2 were recorded and made available to the public.

10204.8. The information "DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS" may not appear adjacent to the names of a candidate for Congress if the Congressional Term Limits Amendment set forth in Section 10204.2 is before the states for ratification or has become part of the U.S. Constitution.

10204.9. Notwithstanding any other provision of California law,

(a) A nonincumbent candidate for the office of U.S. Representative and U.S. Senator, State Senator, or Member of the Assembly shall be permitted to sign a "Term Limits Pledge" each time he or she files as a candidate for such an office. A candidate who declines to sign the "Term Limits Pledge" shall have "DECLINED TO PLEDGE TO SUPPORT TERM LIMITS" printed adjacent to his or her name on the election ballot.

(b) Each time a nonincumbent candidate for U.S. Senator, U.S. Representative, State Senator, or Member of the Assembly files for candidacy, he or she shall be offered the "Term Limits Pledge," until such time as the U.S. Constitution has been amended to limit U.S. Senators to two terms in office and U.S. Representatives to three terms in office.

(c) The "Term Limits Pledge" that each nonincumbent candidate set forth above shall be offered is as follows:

"I support congressional term limits and pledge to use all of my legislative powers to enact the proposed Congressional Term Limits Amendment set forth in the Congressional Term Limits Act. If elected, I pledge to act and vote in such a way that the information "DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS" will not appear next to my name." The pledge form will provide a space for the signature of the candidate and the date signed.

(d) The Secretary of State shall be responsible to make an accurate determination as to whether a candidate for the state or federal legislature shall have placed adjacent to his or her name on the election ballot "DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS" or "DECLINED TO PLEDGE TO SUPPORT TERM LIMITS."

(e) The Secretary of State shall consider timely submitted public comments prior to making the determination required in subdivision (d).

(f) The Secretary of State, in accordance with subdivision (d) shall determine and declare what information, if any, shall appear adjacent to the names of each incumbent state and federal legislator if he or she is to be a candidate in the next general election. In the case of U.S. Representatives and U.S. Senators, this determination and declaration shall be made not later than 13 months after a new Congress has been convened, and shall be based upon Congressional action in the first 12 months of the regular session following the most recent general election. In the case of incumbent state legislators, this determination and declaration shall be made not later than 13 months after a new Legislature has been convened, and shall be based upon state congressional action in the first 12 months of the regular session following the most recent general election.

(g) The Secretary of State shall determine and declare what information, if any, will appear adjacent to the names of nonincumbent candidates for Congress and the California Legislature, not later than five days after the deadline for filing for the office.

(h) If the Secretary of State makes the determination that "DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS" or "DECLINED TO PLEDGE TO SUPPORT TERM LIMITS" may not be placed on the ballot adjacent to the name of a candidate for senator or representative for state or federal office, any elector shall appeal such decision within five days to the California Supreme Court as an original action or waive any right to appeal such decision; in which case the burden of proof shall be upon the Secretary of State to demonstrate by clear and convincing evidence that the candidate has met the requirements set forth in this article and therefore should not have the information "DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS" or "DECLINED TO PLEDGE TO SUPPORT TERM LIMITS" printed on the ballot adjacent to the candidate's name.

(i) If the Secretary of State determines that "DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS" or "DECLINED TO PLEDGE TO SUPPORT TERM LIMITS" shall be placed on the ballot adjacent to a candidate's name, the candidate shall appeal such decision within five days to the California Supreme Court as an original action or waive any right to appeal such decision; in which case the burden of proof shall be upon the candidate to demonstrate by clear and convincing evidence that he or she should not have the information "DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS" or "DECLINED TO PLEDGE TO SUPPORT TERM LIMITS" printed on the ballot adjacent to the candidate's name.

(j) The Supreme Court shall hear the appeal provided for in subdivision (h) and issue a decision within 120 days. The Supreme Court shall hear the appeal provided for in subdivision (i) and issue a decision not later than 61 days before the date of the election.

10204.10. At such time as the Congressional Term Limits Amendment set forth in Section 10204.2 has become part of the U.S. Constitution, this article automatically shall be repealed.

10204.11. Severability. If any portion, clause, or phrase of this act is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, the remaining portions, clauses, and phrases shall not be affected, but shall remain in full force and effect. The portions of this act shall supersede all inconsistent provisions of state law.

Number on ballot

227. **English Language in Public Schools.**

[Submitted by the initiative and approved by electors June 2, 1998.]

PROPOSED LAW

SECTION 1. Chapter 3 (commencing with Section 300) is added to Part 1 of the Education Code, to read:

CHAPTER 3. ENGLISH LANGUAGE EDUCATION FOR IMMIGRANT CHILDREN

Article 1. Findings and Declarations

300. The People of California find and declare as follows:

(a) Whereas, The English language is the national public language of the United States of America and of the State of California, is spoken by the vast majority of California residents, and is also the leading world language for science, technology, and international business, thereby being the language of economic opportunity; and

(b) Whereas, Immigrant parents are eager to have their children acquire a good knowledge of English, thereby allowing them to fully participate in the American Dream of economic and social advancement; and

(c) Whereas, The government and the public schools of California have a moral obligation and a constitutional duty to provide all of California's children, regardless of their ethnicity or national origins, with the skills necessary to become productive members of our society, and of these skills, literacy in the English language is among the most important; and

(d) Whereas, The public schools of California currently do a poor job of educating immigrant children, wasting financial resources on costly experimental language programs whose failure over the past two decades is demonstrated by the current high drop-out rates and low English literacy levels of many immigrant children; and

(e) Whereas, Young immigrant children can easily acquire full fluency in a new language, such as English, if they are heavily exposed to that language in the classroom at an early age.

(f) Therefore, It is resolved that: all children in California public schools shall be taught English as rapidly and effectively as possible.

Article 2. English Language Education

305. Subject to the exceptions provided in Article 3 (commencing with Section 310), all children in California public schools shall be taught English by being taught in English. In particular, this shall require that all children be placed in English language classrooms. Children who are English learners shall be educated through sheltered English immersion during a temporary transition period not normally intended to exceed one year. Local schools shall be permitted to place in the same classroom English learners of different ages but whose degree of English proficiency is similar. Local schools shall be encouraged to mix together in the same classroom English learners from different native-language groups but with the same degree of English fluency. Once English learners have acquired a good working knowledge of English, they shall be transferred to English language mainstream classrooms. As much as possible,

current supplemental funding for English learners shall be maintained, subject to possible modification under Article 8 (commencing with Section 335) below.

306. The definitions of the terms used in this article and in Article 3 (commencing with Section 310) are as follows:

(a) "English learner" means a child who does not speak English or whose native language is not English and who is not currently able to perform ordinary classroom work in English, also known as a Limited English Proficiency or LEP child.

(b) "English language classroom" means a classroom in which the language of instruction used by the teaching personnel is overwhelmingly the English language, and in which such teaching personnel possess a good knowledge of the English language.

(c) "English language mainstream classroom" means a classroom in which the pupils either are native English language speakers or already have acquired reasonable fluency in English.

(d) "Sheltered English immersion" or "structured English immersion" means an English language acquisition process for young children in which nearly all classroom instruction is in English but with the curriculum and presentation designed for children who are learning the language.

(e) "Bilingual education/native language instruction" means a language acquisition process for pupils in which much or all instruction, textbooks, and teaching materials are in the child's native language.

Article 3. Parental Exceptions

310. The requirements of Section 305 may be waived with the prior written informed consent, to be provided annually, of the child's parents or legal guardian under the circumstances specified below and in Section 311. Such informed consent shall require that said parents or legal guardian personally visit the school to apply for the waiver and that they there be provided a full description of the educational materials to be used in the different educational program choices and all the educational opportunities available to the child. Under such parental waiver conditions, children may be transferred to classes where they are taught English and other subjects through bilingual education techniques or other generally recognized educational methodologies permitted by law. Individual schools in which 20 pupils or more of a given grade level receive a waiver shall be required to offer such a class; otherwise, they must allow the pupils to transfer to a public school in which such a class is offered.

311. The circumstances in which a parental exception waiver may be granted under Section 310 are as follows:

(a) Children who already know English: the child already possesses good English language skills, as measured by standardized tests of English vocabulary comprehension, reading, and writing, in which the child scores at or above the state average for his or her grade level or at or above the 5th grade average, whichever is lower; or

(b) Older children: the child is age 10 years or older, and it is the informed belief of the school principal and educational staff that an alternate course of educational study would be better suited to the child's rapid acquisition of basic English language skills; or

(c) Children with special needs: the child already has been placed for a period of not less than thirty days during that school year in an English language classroom and it is subsequently the informed belief of the school principal and educational staff that the child has such special physical, emotional,

psychological, or educational needs that an alternate course of educational study would be better suited to the child's overall educational development. A written description of these special needs must be provided and any such decision is to be made subject to the examination and approval of the local school superintendent, under guidelines established by and subject to the review of the local Board of Education and ultimately the State Board of Education. The existence of such special needs shall not compel issuance of a waiver, and the parents shall be fully informed of their right to refuse to agree to a waiver.

Article 4. Community-Based English Tutoring

315. In furtherance of its constitutional and legal requirement to offer special language assistance to children coming from backgrounds of limited English proficiency, the state shall encourage family members and others to provide personal English language tutoring to such children, and support these efforts by raising the general level of English language knowledge in the community. Commencing with the fiscal year in which this initiative is enacted and for each of the nine fiscal years following thereafter, a sum of fifty million dollars ($50,000,000) per year is hereby appropriated from the General Fund for the purpose of providing additional funding for free or subsidized programs of adult English language instruction to parents or other members of the community who pledge to provide personal English language tutoring to California school children with limited English proficiency.

316. Programs funded pursuant to this section shall be provided through schools or community organizations. Funding for these programs shall be administered by the Office of the Superintendent of Public Instruction, and shall be disbursed at the discretion of the local school boards, under reasonable guidelines established by, and subject to the review of, the State Board of Education.

Article 5. Legal Standing and Parental Enforcement

320. As detailed in Article 2 (commencing with Section 305) and Article 3 (commencing with Section 310), all California school children have the right to be provided with an English language public education. If a California school child has been denied the option of an English language instructional curriculum in public school, the child's parent or legal guardian shall have legal standing to sue for enforcement of the provisions of this statute, and if successful shall be awarded normal and customary attorney's fees and actual damages, but not punitive or consequential damages. Any school board member or other elected official or public school teacher or administrator who willfully and repeatedly refuses to implement the terms of this statute by providing such an English language educational option at an available public school to a California school child may be held personally liable for fees and actual damages by the child's parents or legal guardian.

Article 6. Severability

325. If any part or parts of this statute are found to be in conflict with federal law or the United States or the California State Constitution, the statute shall be implemented to the maximum extent that federal law, and the United States and the California State Constitution permit. Any provision held invalid shall be severed from the remaining portions of this statute.

Article 7. Operative Date

330. This initiative shall become operative for all school terms which begin more than sixty days following the date on which it becomes effective.

Article 8. Amendment

335. The provisions of this act may be amended by a statute that becomes effective upon approval by the electorate or by a statute to further the act's purpose passed by a two-thirds vote of each house of the Legislature and signed by the Governor.

Article 9. Interpretation

340. Under circumstances in which portions of this statute are subject to conflicting interpretations, Section 300 shall be assumed to contain the governing intent of the statute.

MEASURES DEFEATED

INITIATIVE CONSTITUTIONAL AMENDMENT

Number on ballot

224. **State-Funded Design and Engineering Services.**

[Submitted by the initiative and rejected by electors June 2, 1998.]

PROPOSED AMENDMENT TO ARTICLE VII

SECTION 1. TITLE

This measure shall be known and may be cited as the Government Cost Savings and Taxpayer Protection Amendment.

SECTION 2. PURPOSE AND INTENT

It is the intent of the People of the State of California in enacting this measure that engineering, architectural, and similar services provided by the State and certain other entities be furnished at the lowest cost to taxpayers, consistent with quality, health, safety, and the public interest; that contracts for such services be awarded through a competitive bidding process, free of undue political influence; and that contractors be held fully responsible for the performance of their contracts.

SECTION 3. REQUIREMENTS FOR CONTRACTS FOR ENGINEERING, ARCHITECTURAL, AND SIMILAR SERVICES

Section 12 is added to Article VII of the Constitution, to read:

SEC. 12. (a) This section shall apply to contracts for engineering, architectural, landscape architectural, surveying, environmental, or engineering geology services awarded by the State of California or by any state agency to any public or private entity. As used in this section, "state agency" means every state office, officer, agency, department, division, bureau, board, and commission but does not include the University of California, the California State University and Colleges, and local public entities. "State agency" also includes a state agency acting jointly with another state agency or with a local public entity. As used in this section, "local public entity" means any city, county, city and county, including a chartered city or county, public or municipal corporation, school district, special district, authority, or other public entity formed for the

local performance of governmental and proprietary functions within limited boundaries. "Local public entity" also includes two or more local public entities acting jointly.

(b) This section shall also apply to contracts for services specified in subdivision (a) awarded by private entities or local public entities when the contract awarded by the public or private entity involves expenditure of state funds or involves a program, project, facility, or public work for which the State or any state agency has or will have ownership, liability, or responsibility for construction, operation, or maintenance. As used in this section, "state funds" means all money appropriated by the Legislature for expenditure by the State or a state agency and all money included in special funds that the State or a state agency controls.

(c) Prior to the award of any contract covered by this section, the Controller shall prepare and verify an analysis of the cost of performing the work using state civil service employees and the cost of the contract. In comparing costs, the cost of performing the work using state civil service employees shall include only the additional direct costs to the State to provide the same services as the contractor, and the cost of the contract shall include all anticipated contract costs and all costs to be incurred by the State, state agencies, and the contracting entity for the bidding, evaluation, and contract award process and for inspecting, supervising, verifying, monitoring, and overseeing the contract.

(d) The contract shall not be awarded if either of the following conditions is met: (1) the Controller's analysis concludes that state civil service employees can perform the work at less cost than the cost of the contract, unless the services are of such an urgent nature that public interest, health, or safety requires award of the contract; or (2) the Controller or the contracting entity concludes that the contract would not be in the public interest, would have an adverse impact on public health or safety, or would result in lower quality work than if state civil service employees performed the services.

(e) Except for contracts for which a delay resulting from the competitive bidding process would endanger public health or safety, every contract, including amendments, covered by this section that exceeds fifty thousand dollars ($50,000), adjusted annually to reflect changes in the appropriate consumer price index as determined by the Controller, shall be awarded through a publicized competitive bidding process involving sealed bids. Each contract shall be awarded to the lowest qualified bidder. If the contract cost based on the lowest qualified bid exceeds the anticipated contract costs the Controller estimated pursuant to subdivision (c), the Controller shall prepare and verify a revised analysis using the contract bid cost, and that revised analysis shall be used in applying subdivision (d).

(f) For every contract covered by this section, the contractor shall assume full responsibility and liability for its performance of the contract and shall defend, indemnify, and hold the State, the contracting entity, and their agents and employees harmless from any legal action resulting from the performance of the contract.

(g) This section shall not be applied in a manner that will result in the loss of federal funding to the contracting entity for contracts for services.

SECTION 4. SEVERABILITY

If any provision of this amendment or its application to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the amendment which can be given effect without the invalid

provision or application, and to this end the provisions of this amendment are severable.

SECTION 5. APPLICABILITY OF CURRENT LAW

Nothing in this amendment shall expand or restrict the State's constitutional authority, as determined by decisions of the California Supreme Court and California Courts of Appeal in effect on the effective date of this amendment, to enter into contracts with private or public entities.

SECTION 6. RELATIONSHIP TO OTHER MEASURES

To the extent that any other measure on the same subject shall be on the ballot at the same election, it is the intent of the voters that this measure be deemed, to the maximum extent possible, not to be in conflict with such other measure, but rather that this measure should be harmonized with the other measure.

INITIATIVE STATUTES

Number on ballot

223. **Schools. Spending Limits on Administration.**

[Submitted by the initiative and rejected by electors June 2, 1998.]

PROPOSED LAW

EDUCATIONAL EFFICIENCY INITIATIVE

SECTION 1. Part 26.2 (commencing with Section 46650) is added to the Education Code, to read:

PART 26.2. EDUCATIONAL EFFICIENCY INITIATIVE

CHAPTER 1. DESIGNATION

46650. This act shall be known as the California Educational Efficiency Act.

CHAPTER 2. PURPOSE

46651. It is the intent of this initiative to require that no less than ninety-five cents ($0.95) of each dollar appropriated for elementary and secondary public education be contributed in an accountable manner to the academic value of the actual in-school educational experience of pupils so that ninety-five cents ($0.95) of each dollar is spent on direct services to pupils, schoolsite employees, and school facilities. It is the further intent of this initiative to do all of the following:

(a) To reduce the cost of non-school administration in public schools.

(b) To mandate that existing state educational funds be efficiently spent to educate our children.

(c) To allow increased school effectiveness without additional taxes.

(d) To allow a decrease in student/teacher ratio without additional taxes.

(e) To guarantee that any additional new funding for public education will go to schools and classrooms first.

(f) To increase the accountability of the school districts to the citizens of California.

(g) To sanction school districts that fail to be efficient.

(h) To give the community greater decisionmaking authority over their schools.

CHAPTER 3. DEFINITIONS

46652. (a) The term "categorical program" means all those programs set forth in the Education Code that provide funding for special programs, including, but not limited to, programs established for technical schools, youth and adult offenders, adult education, science achievement, environmental education, healthy start program, parenting education, pregnant minors, summer school for the arts, early primary education, academic partnership, school libraries, Native American education, child nutrition allowances, school integration, year-round schools, staff development, new careers, mentor teacher, ethics and civic values, readers for blind teachers, international studies, bilingual office employees, counseling, opportunity schools and classes, nutrition, breakfast and lunch programs, learning disabilities, educational improvement. "Categorical program" shall also include categorical programs receiving federal funds, including, but not limited to, special education programs (Part 30 (commencing with Section 56000) of the Education Code).

(b) "Direct services to pupils" means professional services rendered directly to pupils by certificated or licensed personnel, including, but not limited to, teachers, supervisory personnel, nurses, physicians, psychologists, counselors, audiologists, audiometrists, librarians, and other support services personnel, or all instances where pupils are the direct beneficiaries of immediate and unbrokered services provided to them, such as transportation, cafeteria services, safety and security personnel protection services, and the services of a school supervisor or principal.

(c) "Direct services to schoolsite employees" means immediate and unbrokered services to schoolsite employees, such as actual training or professional development sessions or classes, police services, school-assigned personnel providing management functions and support to the school supervisor or principal, and the services of the school supervisor or principal.

(d) "Direct services to school facilities" means the labor and material costs of the actual physical cleaning, maintenance, and improvement of school facilities exclusive of any central district handling, administration, or overhead costs, and services of the school-assigned plant manager, if any.

(e) "General administration" means those activities involving the governing board of a school district, activities relating to the executive responsibility of the school district, activities associated with central data processing, central support, activities associated with fiscal services, and other general administrative services. For purposes of the definition of general administration, the following terms have the following meanings:

(1) "Board" means the activities of the elected body that has been created under the applicable provisions of law and that has responsibility for the educational activities over which the elected body has jurisdiction. These activities may include, but are not limited to, supervision over services of the board, services related to the election of members of the board, services related to property tax assessment and collection, and services related to employee relations and negotiations.

(2) "Central data processing" includes, but is not limited to, in-house services provided from a mainframe computer or minicomputer as well as the costs of centralized services provided by another agency. Central data processing

does not include smaller specialized units such as microcomputers or personal computers.

(3) "Central support" means activities relating to paying, transporting, exchanging, and maintaining goods and services for the school district. These activities include, but are not limited to, planning, research development and evaluation services; the provision of public information; purchasing; warehousing and distribution; and printing, publishing, and duplicating. For purposes of the definition of central support, the following terms have the following meanings:

(A) "Development services" include, but are not limited to, activities relating to the deliberate evolving process of improving educational programs, such as activities using the products of research.

(B) "Evaluation services" include, but are not limited to, activities relating to ascertaining or judging the value or amount of an action or an outcome through the careful appraisal of previously specified data in light of the particular situation and the goals previously established.

(C) "Planning services" include, but are not limited to, activities relating to the selection or identification of the overall, long-range goals and priorities of the school district and the formulation of various courses of action needed to achieve those goals through the identification of needs and relative costs and benefits of each course of action.

(D) "Printing, publishing, and duplicating" means activities relating to the printing and publishing of administrative publications, such as annual reports, school directories, and manuals. These activities also include centralized services for duplicating school materials and instruments, such as school bulletins, newsletters, and notices.

(E) "Public information" means activities relating to the writing, editing, and other preparation necessary to disseminate educational and administrative information to the public through various news media or through personal contact.

(F) "Purchasing" means activities relating to the purchasing of supplies, furniture, equipment, and materials used in schools or a school district.

(G) "Research services" include, but are not limited to, activities relating to the systematic study and investigation of the various aspects of education undertaken to establish facts and principles.

(H) "Warehousing and distribution" means the receipt, storage, and distribution of supplies, furniture, equipment, materials, and mail.

(4) "Executive" means the activities relating to the executive responsibility of a school district, including, but not limited to, services pertaining to the office of the county superintendent of schools, to community relations, and to state and federal relations.

(5) "Fiscal services" means activities relating to the fiscal operations of a school district. Fiscal operations include, but are not limited to, budgeting, receiving and disbursing funds, financial and property accounting, payroll, inventory control, internal auditing, and managing funds. For purposes of the definition of fiscal services, the following terms have the following meaning:

(A) "Budgeting" means activities relating to the supervision of budget planning, formulating, control, and analysis.

(B) "Financial accounting" means activities relating to the maintenance of records of the financial operations and transactions of the school district, including, but not limited to, accounting and interpreting financial transactions and account records.

(C) "Internal auditing" means activities relating to the verification of account records, including the evaluation of the adequacy of the internal control system, such as verification and safeguarding.

(D) "Payroll" means activities relating to the periodic payment of individuals entitled to remuneration for services rendered to a school district.

(E) "Property accounting" means activities relating to the preparation and maintenance of current inventory records of land, buildings, and equipment owned or leased by a school district as used for equipment control and facilities planning.

(F) "Receiving and disbursing funds" means activities relating to taking in and paying out money, including, but not limited to, the current audit of receipts, the preaudit of requisitions or purchase orders to determine whether the amounts are within the budgetary allowance and to determine that the disbursements are lawful expenditures of a school or a school district, and the management of school funds.

(6) "Personnel" means activities relating to the maintenance of an efficient staff for schools under the jurisdiction of a school district.

(7) "Other general administrative services" means other general administrative services of a school district not defined in this section.

(f) "Instructional resources supervision" means overall management and maintenance of the resources to instruct pupils and activities and materials used by pupils to enhance learning.

(g) "Supervision of instruction" means activities undertaken primarily to assist instructional staff in planning, developing, and evaluating the process of providing learning experience for pupils. These activities include curriculum development, instructional research, instructional staff development, instructional supervision, and the organizing and coordinating of training of staff in techniques for instruction, child development and understanding. For purposes of the definition of supervision of instruction, the following terms have the following meanings:

(1) "Curriculum development" means activities that aid teachers in developing the curriculum, preparing and utilizing special curriculum materials, and understanding and appreciating the various techniques that stimulate and motivate pupils.

(2) "Instructional research" means activities associated with assessing programs and instruction based on research.

(3) "Instructional staff development" means activities that contribute to the professional or occupational growth and competence of members of the instructional staff during the time of their service to a school or school district. These activities include the coordination of services which guide teachers in the use of instructional materials, administering sabbaticals, and providing the environment for in-service training.

(4) "Instructional supervision" means activities associated with directing, managing, and supervising instruction services.

Chapter 4. Allocation and Expenditure of School Funds

46653. For the 1999–2000 fiscal year and each fiscal year thereafter, each school district shall allocate and expend not more than 5 percent of the total aggregate amount of all funds received from state, federal, and local sources, including, but not limited to, all state and federal funds received for categorical programs, for administrative costs. Administrative costs means the sum of expenditures under the following categories as defined in this part:

(1) General administration.
(2) Instructional resources supervision.
(3) Supervision of instruction.

CHAPTER 5. FISCAL ADMINISTRATION

46654. Notwithstanding any other provision of law, for the 1998–99 fiscal year and each fiscal year thereafter, each school district shall develop as part of its budget a system that indicates the intended contribution of each projected expenditure to the achievement of a specific performance outcome objective pursuant to the school district's effort to improve pupil achievement.

46655. For the 2004–05 fiscal year and every five fiscal years thereafter, the governing board of each school district shall contract to have an independent general organizational management audit which shall include a performance audit and fiscal efficiency review undertaken to determine the degree to which the school district has complied with this part, including the effect upon pupil achievement of the expenditures of the school district.

CHAPTER 6. REPORTING REQUIREMENTS

46656. (a) For the 1996–97 fiscal year and each fiscal year thereafter through the 1999–2000 fiscal year, each school district shall report to the State Board of Education the total expenditures under the following reporting categories as defined by the State Department of Education:

(1) District administration as reported in column 3 of Form J380 (EDP Nos. 400 and 401) as that form existed on June 30, 1994 or any equivalent successor to this reporting category or any subsequent form(s) which report the same class of expenditures.

(2) Instructional administration as reported in column 3 of Form J380 (EDP No. 375) as that form existed on June 30, 1994 or any equivalent successor to this reporting category or any subsequent form(s) which report the same class of expenditures.

(3) Special projects administration and direct support costs as reported in column 3 of Form J380 (EDP No. 398) as that form existed on June 30, 1994 or any equivalent successor to this reporting category or any subsequent form(s) which report the same class of expenditures.

(4) Centralized data processing as reported in column 3 of Form J380 (EDP No. 402) as that form existed on June 30, 1994 or any equivalent successor to this reporting category or any subsequent form(s) which report the same class of expenditures.

(5) Maintenance and operations administration (EDP No. 408/6) as that form existed on June 30, 1994 or any equivalent successor to this reporting category or any subsequent form(s) which report the same class of expenditures.

(b) For the 1996–97 fiscal year and each fiscal year thereafter through the 1999–2000 fiscal year, each school district shall compute the percentage of funds expended in each fiscal year for the categories set forth in subdivision (a) to the total aggregate expenditures of all funds received from state, federal, and local sources, including, but not limited to, all state and federal funds received for categorical programs. Each school district annually shall publish the percentage calculated under this subdivision in a form that is easily understood by the general public and shall make the publication readily available to the general public.

(c) For purposes of this section and notwithstanding Section 46652 or any other provision of law, a school district may use the standardized account code

structure published by the State Department of Education pursuant to Chapter 237 of the Statutes of 1993.

(d) For the 2000–01 fiscal year and each fiscal year thereafter, each school district shall compute the sum of expenditures under general administration, supervision of instruction, and instructional resources supervision as defined in Section 46652 as a percentage of the total aggregate expenditures of all funds received from state, federal and local sources, including, but not limited to, all state and federal funds received for categorical programs. Each school district annually shall publish the percentage calculated under this subdivision in a form that is easily understood by the general public and shall make the publication readily available to the general public.

CHAPTER 7. SANCTIONS

46657. Any school district that fails to comply with this part shall be subject to sanctions as described in this chapter. The State Board of Education shall fine each school district 25 dollars per unit of ADA, or five percent of basic per-ADA revenue limit times total ADA, whichever is the greater, computed on the ADA basis of the fiscal year preceding the finding of noncompliance. There shall be public notice of violations at a regular governing board meeting.

GENERAL PROVISIONS

SEC. 2. IMPLEMENTATION

The provisions of this initiative shall be implemented as quickly as possible. Agencies of the state are prohibited from taking any action which delays implementation of this initiative or of any provision thereof. Any delay in implementation shall not invalidate this initiative or any provision thereof. The Legislature may amend this act only to further its purpose by a bill passed by a vote of two-thirds of the Legislature and signed by the Governor.

SEC. 3. LIMITATION OF ACTIONS

Any action or proceeding contesting the validity of this initiative, any provision of this initiative or the adoption of this initiative shall be commenced within six months of the date of the election at which this initiative is approved; otherwise this initiative and all of its provisions shall be held valid, legal and uncontestable. However, this limitation shall not of itself preclude an action or proceeding to challenge the application of this initiative or any of its provisions to a particular person or circumstance.

SEC. 4. SEVERABILITY

If any provision of this initiative or the application thereof to any person or circumstance is held invalid, the remaining provisions and their applications shall remain in force. To this end, the provisions of this initiative are severable.

Number on ballot

226. **Political Contributions by Employees, Union Members, Foreign Entities.**

[Submitted by the initiative and rejected by electors June 2, 1998.]

PROPOSED LAW

SECTION 1. The people of the State of California find and declare as follows:

(a) Contributions to political campaigns from foreign interests that have a specific financial stake in legislation and policy can have a corrupting or potentially corrupting effect on, or give the perception of corruption of, the electoral and governmental process.

(b) Contributions that are taken from individuals without their knowledge and complete consent create the public perception that individuals play an insignificant role in the political process.

(c) The financial strength of special interest groups or the methods used to collect funds by certain organizations should not permit them to exercise a disproportionate or controlling influence on the election of candidates to state and local office.

(d) Candidates are raising a larger percentage of their funds from special interests with a specific financial stake in matters before state and local government and a smaller percentage of their funds directly from individuals. This has caused the public perception that decisions of elected officials are being improperly influenced by monetary contributions and that individuals play an insignificant role in the process.

SEC. 2. In enacting this measure, it is the intent of the people of the State of California to accomplish the following purposes:

(a) To eliminate corruption, or the perception of corruption, of the electoral and governmental process by contributions from foreign interests.

(b) To ensure that contributions and expenditures in political campaigns are made with the knowledge and complete consent of the individuals who are making them.

(c) To ensure that individuals and interest groups have fair and equal opportunity to influence the electoral and governmental process.

(d) To restore public trust in governmental institutions and the electoral process.

SEC. 3. Section 85320 is added to the Government Code, to read:

85320. (a) No person may make or arrange, and no candidate or committee may solicit or accept, any contribution from a foreign national. This section does not apply to contributions to or accepted by a committee organized and operated exclusively for the purpose of supporting or opposing the qualification or passage of a measure.

(b) For the purposes of this section, "foreign national" has the same meaning as defined in Section 441e of Title 2 of the United States Code on April 1, 1997.

SEC. 4. Chapter 5.9 (commencing with Section 85990) is added to Title 9 of the Government Code, to read:

CHAPTER 5.9. LIMITATIONS ON EMPLOYERS AND LABOR ORGANIZATIONS

85990. (a) No employer or other person responsible for the disbursement of funds in payment of wages may deduct any funds from an employee's wages that the employer knows or has reason to know will be used in whole or in part as a contribution or expenditure except upon the written request of the employee received within the previous 12 months on a form as described by subdivision (b).

(b) The request referred to in subdivision (a) shall be made on a form, the sole purpose of which is the documentation of such a request. The form shall be prescribed by the commission and at a minimum shall contain the name of the employee, the name of the employer, the total annual amount that is being withheld for a contribution or expenditure, and the employee's signature. The form's title shall read, in at least 24-point bold type, "Request for Political

Payroll Deductions" and shall also state, in at least 14-point bold type, the following words immediately above the signature line:

"Signing this form authorizes your employer to make a deduction from your paycheck that is intended to be used as a political contribution or expenditure. You are not obligated to authorize this deduction. Your signature below is completely voluntary and cannot in any way affect your employment."

(c) Each employer or other person who makes deductions under subdivision (a) shall maintain records that include a copy of each employee's request, the amounts and dates funds were actually withheld, the amounts and dates funds were transferred to a committee, and the committee to which the funds were transferred.

(d) Copies of all records maintained under subdivision (c) shall be sent to the commission upon request.

(e) The requirements of this section may not be waived by an employee and waiver of these requirements may not be made a condition of employment or continued employment.

(f) For the purposes of this section, "employer" has the same meaning as defined in Section 3300 of the Labor Code on April 1, 1997.

(g) For the purposes of this section, "employee" has the same meaning as defined in Section 3351 of the Labor Code on April 1, 1997.

(h) For the purposes of this section, "wages" has the same meaning as that term had under Section 200 of the Labor Code on April 1, 1997.

85991. (a) No labor organization may use any portion of dues, agency shop fees, or any other fees paid by members of the labor organization, or individuals who are not members, to make contributions or expenditures except upon the written authorization of the member, or individual who is not a member, received within the previous 12 months on a form described by subdivision (b).

(b) The authorization referred to in subdivision (a) shall be provided on a form, the sole purpose of which is the documentation of such an authorization. The form shall be prescribed by the commission and at a minimum shall contain the name of the individual granting the authorization, the labor organization to which the authorization is granted, the total annual amount of the dues, agency shop fees, or any other fees that will be used to make contributions or expenditures, and the signature of the individual granting the authorization. The form's title shall read, in at least 24-point bold type, "Authorization for Political Use of Fees" and shall also state, in at least 14-point bold type, the following words immediately above the signature line:

"Signing this form authorizes a portion of your dues, agency shop fees, or other fees to be used for making political contributions or expenditures. You are not obligated to sign this authorization. Your signature below is completely voluntary and cannot in any way affect your employment."

(c) Any labor organization that uses any portion of dues, agency shop fees, or other fees to make contributions or expenditures under subdivision (a) shall maintain records that include a copy of each authorization obtained under subdivision (b), the amounts and dates funds were actually withheld, the amounts and dates funds were transferred to a committee, and the committee to which the funds were transferred.

(d) Copies of all records maintained under subdivision (c) shall be sent to the commission upon request.

(e) Individuals who do not authorize contributions or expenditures under subdivision (a) may not have their dues, agency shop fees, or other fees raised in lieu of the contribution or expenditure.

(f) If the dues, agency shop fees, or other fees referred to in subdivisions (a) and (c) included an amount for a contribution or expenditure, the dues, agency shop fees, or other fees shall be reduced by that amount for any individual who does not sign an authorization as described under subdivision (a).

(g) The requirements of this section may not be waived by the member or individual and waiver of the requirements may not be made a condition of employment or continued employment.

(h) For the purposes of this section, "agency shop" has the same meaning as defined in subdivision (a) of Section 3502.5 of the Government Code on April 1, 1997.

(i) For the purposes of this section, "labor organization" has the same meaning as defined in subdivision (g) of Section 12926 of the Government Code on April 1, 1997.

SEC. 5. Unless otherwise specifically defined herein, the definitions and provisions of the Political Reform Act of 1974 (Title 9 (commencing with Section 81000), Government Code), as amended, shall govern the interpretation of this initiative.

SEC. 6. The effective date of this measure shall be the first day of the month following the date that this initiative is approved by the voters.

SEC. 7. This measure shall be self-executing.

SEC. 8. The provisions of this measure are severable. If any provision of this measure or its application to any person or circumstance is held invalid, that invalidity may not affect any other provision or application of this measure that can be given effect without the invalid provision or application. If any provision of this measure is held to be in conflict with federal law, that provision shall remain in full force and effect to the maximum extent permitted by federal law. For the purposes of this section, "provision" means any section, subdivision, sentence, phrase, or word.

SEC. 9. This measure shall be liberally construed to accomplish its purposes.

SEC. 10. If this measure is approved by the voters but superseded by any other conflicting ballot measure approved by more voters at the same election, and the conflicting ballot measure is later held invalid, it is the intent of the voters that this measure shall be self-executing and given full force of the law.

SEC. 11. The provisions of this measure may not be altered or amended except by a vote of the people.

PROPOSITIONS SUBMITTED TO VOTE OF ELECTORS

General Election, November 3, 1998

MEASURES ADOPTED

CONSTITUTIONAL AMENDMENTS SUBMITTED BY LEGISLATURE

Number on ballot

1. **Property Taxes: Contaminated Property.** (Statutes 1998, Resolution Chapter 60, ACA 22)

[Approved by electors November 3, 1998.]

PROPOSED AMENDMENT TO SECTION 2 OF ARTICLE XIII A

SEC. 2. (a) The ~~full cash value~~ *"full cash value"* means the county assessor's valuation of real property as shown on the 1975–76 tax bill under "full cash value" or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment. All real property not already assessed up to the 1975–76 full cash value may be reassessed to reflect that valuation. For purposes of this section, "newly constructed" does not include real property ~~which~~ *that* is reconstructed after a disaster, as declared by the Governor, where the fair market value of the real property, as reconstructed, is comparable to its fair market value prior to the disaster. Also, the term "newly constructed" ~~shall~~ *does* not include the portion of reconstruction or improvement to a structure, constructed of unreinforced masonry bearing wall construction, necessary to comply with any local ordinance relating to seismic safety during the first 15 years following that reconstruction or improvement.

However, the Legislature may provide that , under appropriate circumstances and pursuant to definitions and procedures established by the Legislature, any person over the age of 55 years who resides in property ~~which~~ *that* is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII and any implementing legislation may transfer the base year value of the property entitled to exemption, with the adjustments authorized by subdivision (b), to any replacement dwelling of equal or lesser value located within the same county and purchased or newly constructed by that person as his or her principal residence within two years of the sale of the original property. For purposes of this section, "any person over the age of 55 years" includes a married couple one member of which is over the age of 55 years. For purposes of this section, "replacement dwelling" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, and any land on which it may be situated. For purposes of this section, a two-dwelling unit shall be considered as two separate single-family dwellings. This paragraph shall apply to any replacement dwelling ~~which~~ *that* was purchased or newly constructed on or after November 5, 1986.

In addition, the Legislature may authorize each county board of supervisors, after consultation with the local affected agencies within the county's boundaries, to adopt an ordinance making the provisions of this subdivision relating to transfer of base year value also applicable to situations in which the replacement dwellings are located in that county and the original properties are located in another county within this State. For purposes of this paragraph, "local affected agency" means any city, special district, school district, or community college district ~~which~~ *that* receives an annual property tax revenue allocation. This paragraph shall apply to any replacement dwelling ~~which~~ *that* was purchased or newly constructed on or after the date the county adopted the provisions of this subdivision relating to transfer of base year value, but shall not apply to any replacement dwelling ~~which~~ *that* was purchased or newly constructed before November 9, 1988.

The Legislature may extend the provisions of this subdivision relating to the transfer of base year values from original properties to replacement dwellings of homeowners over the age of 55 years to severely disabled homeowners, but only with respect to those replacement dwellings purchased or newly constructed on or after the effective date of this paragraph.

(b) The full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent for any given year or reduction as shown in the consumer price index or comparable data for the area under taxing jurisdiction, or may be reduced to reflect substantial damage, destruction , or other factors causing a decline in value.

(c) For purposes of subdivision (a), the Legislature may provide that the term "newly constructed" ~~shall~~ *does* not include any of the following:

(1) The construction or addition of any active solar energy system.

(2) The construction or installation of any fire sprinkler system, other fire extinguishing system, fire detection system, or fire-related egress improvement, as defined by the Legislature, ~~which~~ *that* is constructed or installed after the effective date of this paragraph.

(3) The construction, installation, or modification on or after the effective date of this paragraph of any portion or structural component of a ~~single or multiple family~~ *single- or multiple-family* dwelling ~~which~~ *that* is eligible for the homeowner's exemption if the construction, installation, or modification is for the purpose of making the dwelling more accessible to a severely disabled person.

(4) The construction or installation of seismic retrofitting improvements or improvements utilizing earthquake hazard mitigation technologies, ~~which~~ *that* are constructed or installed in existing buildings after the effective date of this paragraph. The Legislature shall define eligible improvements. This exclusion does not apply to seismic safety reconstruction or improvements ~~which~~ *that* qualify for exclusion pursuant to the last sentence of the first paragraph of subdivision (a).

(5) The construction, installation, removal, or modification on or after the effective date of this paragraph of any portion or structural component of an existing building or structure if the construction, installation, removal, or modification is for the purpose of making the building more accessible to, or more usable by, a disabled person.

(d) For purposes of this section, the term "change in ownership" ~~shall~~ *does* not include the acquisition of real property as a replacement for comparable property if the person acquiring the real property has been displaced from the

property replaced by eminent domain proceedings, by acquisition by a public entity, or governmental action ~~which~~ *that* has resulted in a judgment of inverse condemnation. The real property acquired shall be deemed comparable to the property replaced if it is similar in size, utility, and function, or if it conforms to state regulations defined by the Legislature governing the relocation of persons displaced by governmental actions. The provisions of this subdivision shall be applied to any property acquired after March 1, 1975, but shall affect only those assessments of that property ~~which~~ *that* occur after the provisions of this subdivision take effect.

(e) (1) Notwithstanding any other provision of this section, the Legislature shall provide that the base year value of property ~~which~~ *that* is substantially damaged or destroyed by a disaster, as declared by the Governor, may be transferred to comparable property within the same county that is acquired or newly constructed as a replacement for the substantially damaged or destroyed property.

(2) Except as provided in paragraph (3), this subdivision shall apply to any comparable replacement property acquired or newly constructed on or after July 1, 1985, and to the determination of base year values for the 1985–86 fiscal year and fiscal years thereafter.

(3) In addition to the transfer of base year value of property within the same county that is permitted by paragraph (1), the Legislature may authorize each county board of supervisors to adopt, after consultation with affected local agencies within the county, an ordinance allowing the transfer of the base year value of property that is located within another county in the State and is substantially damaged or destroyed by a disaster, as declared by the Governor, to comparable replacement property of equal or lesser value that is located within the adopting county and is acquired or newly constructed within three years of the substantial damage or destruction of the original property as a replacement for that property. The scope and amount of the benefit provided to a property owner by the transfer of base year value of property pursuant to this paragraph shall not exceed the scope and amount of the benefit provided to a property owner by the transfer of base year value of property pursuant to subdivision (a). For purposes of this paragraph, "affected local agency" means any city, special district, school district, or community college district that receives an annual allocation of ad valorem property tax revenues. 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, as declared by the Governor, 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.

(f) For the purposes of subdivision (e):

(1) Property is substantially damaged or destroyed if it sustains physical damage amounting to more than 50 percent of its value immediately before the disaster. Damage includes a diminution in the value of property as a result of restricted access caused by the disaster.

(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~~ *that* it replaces, and if the fair market value of the acquired property is comparable to the fair market value of the replaced property prior to the disaster.

(g) For purposes of subdivision (a), the terms "purchased" and "change in ownership" ~~shall~~ *do* not include the purchase or transfer of real property between spouses since March 1, 1975, including, but not limited to, all of the following:

(1) Transfers to a trustee for the beneficial use of a spouse, or the surviving spouse of a deceased transferor, or by a trustee of such a trust to the spouse of the trustor.

(2) Transfers to a spouse ~~which~~ *that* take effect upon the death of a spouse.

(3) Transfers to a spouse or former spouse in connection with a property settlement agreement or decree of dissolution of a marriage or legal separation.

(4) The creation, transfer, or termination, solely between spouses, of any coowner's interest.

(5) The distribution of a legal entity's property to a spouse or former spouse in exchange for the interest of the spouse in the legal entity in connection with a property settlement agreement or a decree of dissolution of a marriage or legal separation.

(h) (1) For purposes of subdivision (a), the terms "purchased" and "change in ownership" ~~shall~~ *do* not include the purchase or transfer of the principal residence of the transferor in the case of a purchase or transfer between parents and their children, as defined by the Legislature, and the purchase or transfer of the first ~~$1,000,000~~ *one million dollars ($1,000,000)* of the full cash value of all other real property between parents and their children, as defined by the Legislature. This subdivision shall apply to both voluntary transfers and transfers resulting from a court order or judicial decree.

(2) (A) Subject to subparagraph (B), commencing with purchases or transfers that occur on or after the date upon which the measure adding this paragraph becomes effective, the exclusion established by paragraph (1) also applies to a purchase or transfer of real property between grandparents and their grandchild or grandchildren, as defined by the Legislature, that otherwise qualifies under paragraph (1), if all of the parents of that grandchild or those grandchildren, who qualify as the children of the grandparents, are deceased as of the date of the purchase or transfer.

(B) A purchase or transfer of a principal residence shall not be excluded pursuant to subparagraph (A) if the transferee grandchild or grandchildren also received a principal residence, or interest therein, through another purchase or transfer that was excludable pursuant to paragraph (1). The full cash value of any real property, other than a principal residence, that was transferred to the grandchild or grandchildren pursuant to a purchase or transfer that was excludable pursuant to paragraph (1), and the full cash value of a principal residence that fails to qualify for exclusion as a result of the preceding sentence, shall be included in applying, for purposes of subparagraph (A), the one million dollar ($1,000,000) full cash value limit specified in paragraph (1).

(i) *(1) Notwithstanding any other provision of this section, the Legislature shall provide with respect to a qualified contaminated property, as defined in paragraph (2), that either, but not both, of the following shall apply:*

(A) (i) Subject to the limitation of clause (ii), the base year value of the qualified contaminated property, as adjusted as authorized by subdivision (b), may be transferred to a replacement property that is acquired or newly constructed as a replacement for the qualified contaminated property, if the replacement real property has a fair market value that is equal to or less than the fair market value of the qualified contaminated property if that property were not contaminated and, except as otherwise provided by this clause, is located within

the same county. The base year value of the qualified contaminated property may be transferred to a replacement real property located within another county if the board of supervisors of that other county has, after consultation with the affected local agencies within that county, adopted a resolution authorizing an intercounty transfer of base year value as so described.

(ii) This subparagraph applies only to replacement property that is acquired or newly constructed within five years after ownership in the qualified contaminated property is sold or otherwise transferred.

(B) In the case in which the remediation of the environmental problems on the qualified contaminated property requires the destruction of, or results in substantial damage to, a structure located on that property, the term "new construction" does not include the repair of a substantially damaged structure, or the construction of a structure replacing a destroyed structure on the qualified contaminated property, performed after the remediation of the environmental problems on that property, provided that the repaired or replacement structure is similar in size, utility, and function to the original structure.

(2) For purposes of this subdivision, "qualified contaminated property" means residential or nonresidential real property that is all of the following:

(A) In the case of residential real property, rendered uninhabitable, and in the case of nonresidential real property, rendered unusable, as the result of either environmental problems, in the nature of and including, but not limited to, the presence of toxic or hazardous materials, or the remediation of those environmental problems, except where the existence of the environmental problems was known to the owner, or to a related individual or entity as described in paragraph (3), at the time the real property was acquired or constructed. For purposes of this subparagraph, residential real property is "uninhabitable" if that property, as a result of health hazards caused by or associated with the environmental problems, is unfit for human habitation, and nonresidential real property is "unusable" if that property, as a result of health hazards caused by or associated with the environmental problems, is unhealthy and unsuitable for occupancy.

(B) Located on a site that has been designated as a toxic or environmental hazard or as an environmental cleanup site by an agency of the State of California or the federal government.

(C) Real property that contains a structure or structures thereon prior to the completion of environmental cleanup activities, and that structure or structures are substantially damaged or destroyed as a result of those environmental cleanup activities.

(D) Stipulated by the lead governmental agency, with respect to the environmental problems or environmental cleanup of the real property, not to have been rendered uninhabitable or unusable, as applicable, as described in subparagraph (A), by any act or omission in which an owner of that real property participated or acquiesced.

(3) It shall be rebuttably presumed that an owner of the real property participated or acquiesced in any act or omission that rendered the real property uninhabitable or unusable, as applicable, if that owner is related to any individual or entity that committed that act or omission in any of the following ways:

(A) Is a spouse, parent, child, grandparent, grandchild, or sibling of that individual.

(B) Is a corporate parent, subsidiary, or affiliate of that entity.

(C) Is an owner of, or has control of, that entity.

(D) Is owned or controlled by that entity.

If this presumption is not overcome, the owner shall not receive the relief provided for in subparagraph (A) or (B) of paragraph (1). The presumption may be overcome by presentation of satisfactory evidence to the assessor, who shall not be bound by the findings of the lead governmental agency in determining whether the presumption has been overcome.

(4) This subdivision applies only to replacement property that is acquired or constructed on or after January 1, 1995, and to property repairs performed on or after that date.

(j) Unless specifically provided otherwise, amendments to this section adopted prior to November 1, 1988, shall be effective for changes in ownership ~~which~~ *that* occur, and new construction ~~which~~ *that* is completed, after the effective date of the amendment. Unless specifically provided otherwise, amendments to this section adopted after November 1, 1988, shall be effective for changes in ownership ~~which~~ *that* occur, and new construction ~~which~~ *that* is completed, on or after the effective date of the amendment.

Number on ballot

2. **Transportation: Funding.** (Statutes 1998, Resolution Chapter 77, ACA 30)

[Approved by electors November 3, 1998.]

PROPOSED AMENDMENT OF ARTICLE XIX AND PROPOSED ADDITION OF ARTICLE XIX A

First—That Section 6 of Article XIX thereof is repealed.

~~SEC. 6. This article shall not prevent the designated tax revenues from being temporarily loaned to the State General Fund upon condition that amounts loaned be repaid to the funds from which they were borrowed.~~

Second—That Section 6 is added to Article XIX thereof, to read:

SEC. 6. The tax revenues designated under this article may be loaned to the General Fund only if one of the following conditions is imposed:

(a) That any amount loaned is to be repaid in full to the fund from which it was borrowed during the same fiscal year in which the loan was made, except that repayment may be delayed until a date not more than 30 days after the date of enactment of the budget bill for the subsequent fiscal year.

(b) That any amount loaned is to be repaid in full to the fund from which it was borrowed within three fiscal years from the date on which the loan was made and one of the following has occurred:

(1) The Governor has proclaimed a state of emergency and declares that the emergency will result in a significant negative fiscal impact to the General Fund.

(2) The aggregate amount of General Fund revenues for the current fiscal year, as projected by the Governor in a report to the Legislature in May of the current fiscal year, is less than the aggregate amount of General Fund revenues for the previous fiscal year, adjusted for the change in the cost of living and the change in population, as specified in the budget submitted by the Governor pursuant to Section 12 of Article IV in the current fiscal year.

(c) Nothing in this section prohibits the Legislature from authorizing, by statute, loans to local transportation agencies, cities, counties, or cities and counties, from funds that are subject to this article, for the purposes authorized

under this article. Any loan authorized as described by this subdivision shall be repaid, with interest at the rate paid on money in the Pooled Money Investment Account, or any successor to that account, during the period of time that the money is loaned, to the fund from which it was borrowed, not later than four years after the date on which the loan was made.

Third—That Article XIX A is added thereto, to read:

ARTICLE XIX A
LOANS FROM THE PUBLIC TRANSPORTATION ACCOUNT OR LOCAL TRANSPORTATION FUNDS

SECTION 1. The funds in the Public Transportation Account in the State Transportation Fund, or any successor to that account, may be loaned to the General Fund only if one of the following conditions is imposed:

(a) That any amount loaned is to be repaid in full to the account during the same fiscal year in which the loan was made, except that repayment may be delayed until a date not more than 30 days after the date of enactment of the budget bill for the subsequent fiscal year.

(b) That any amount loaned is to be repaid in full to the account within three fiscal years from the date on which the loan was made and one of the following has occurred:

(1) The Governor has proclaimed a state of emergency and declares that the emergency will result in a significant negative fiscal impact to the General Fund.

(2) The aggregate amount of General Fund revenues for the current fiscal year, as projected by the Governor in a report to the Legislature in May of the current fiscal year, is less than the aggregate amount of General Fund revenues for the previous fiscal year, as specified in the budget submitted by the Governor pursuant to Section 12 of Article IV in the current fiscal year.

SEC. 2. (a) As used in this section, a "local transportation fund" is a fund created under Section 29530 of the Government Code, or any successor to that statute.

(b) All local transportation funds are hereby designated trust funds.

(c) A local transportation fund that has been created pursuant to law may not be abolished.

(d) Money in a local transportation fund shall be allocated only for the purposes authorized under Article 11 (commencing with Section 29530) of Chapter 2 of Division 3 of Title 3 of the Government Code and Chapter 4 (commencing with Section 99200) of Part 11 of Division 10 of the Public Utilities Code, as those provisions existed on October 1, 1997. Neither the county nor the Legislature may authorize the expenditure of money in a local transportation fund for purposes other than those specified in this subdivision.

Number on ballot

11. **Local Sales and Use Taxes—Revenue Sharing.** (Statutes 1998, Resolution Chapter 133, ACA 10)

[Approved by electors November 3, 1998.]

PROPOSED AMENDMENT TO SECTION 29 OF ARTICLE XIII

SEC. 29. *(a)* The Legislature may authorize counties, cities and counties, and cities to enter into contracts to apportion between them the revenue derived from any sales or use tax imposed by them ~~which~~ *that* is collected for them by the State. Before ~~any such~~ *the* contract becomes operative, it shall be authorized by a majority of those voting on the question in each jurisdiction at a general or direct primary election.

(b) Notwithstanding subdivision (a), on and after the operative date of this subdivision, counties, cities and counties, and cities may enter into contracts to apportion between them the revenue derived from any sales or use tax imposed by them pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law, or any successor provisions, that is collected for them by the State, if the ordinance or resolution proposing each contract is approved by a two-thirds vote of the governing body of each jurisdiction that is a party to the contract.

INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE

Number on ballot

10. **State and County Early Childhood Development Programs. Additional Tobacco Surtax.**

[Submitted by the initiative and approved by electors November 3, 1998.]

PROPOSED LAW

CALIFORNIA CHILDREN AND FAMILIES FIRST INITIATIVE

SECTION 1. Title. This measure shall be known and may be cited as the "California Children and Families First Act of 1998."

SEC. 2. Findings and Declarations. The people find and declare as follows:

(a) There is a compelling need in California to create and implement a comprehensive, collaborative, and integrated system of information and services to promote, support, and optimize early childhood development from the prenatal stage to five years of age.

(b) There is a further compelling need in California to ensure that early childhood development programs and services are universally and continuously available for children until the beginning of kindergarten. Proper parenting, nurturing, and health care during these early years will provide the means for California's children to enter school in good health, ready and able to learn, and emotionally well developed.

(c) It has been determined that a child's first three years are the most critical in brain development, yet these crucial years have inadvertently been neglected. Experiences that fill the child's first three years have a direct and substantial

impact not only on brain development but on subsequent intellectual, social, emotional, and physical growth.

(d) The seminal Starting Points report by the Carnegie Corporation of New York concludes that "how children function from the preschool years all the way through adolescence, and even adulthood, hinges in large part on their experiences before the age of three."

(e) New research from many sources, including the Carnegie Corporation, the Baylor College of Medicine, and the White House Conference on Early Childhood Development, demonstrates that the capacity of a child's brain grows more during the first three years than at any other time.

(f) The Education Commission of the States' report on the results of neuroscience research associated with early childhood development states: "Too many infants are born with problems that hinder their start in life. Damage that occurs to the embryo during critical growth times may lead to irreversible disabilities."

(g) California taxpayers spend billions of dollars on public education each year, yet there are few programs designed specifically to help prepare children to enter school in good health, ready and able to learn, and emotionally well developed. Children who succeed in school are far more likely to engage in meaningful social, economic, and civic participation as adults and to avoid the use of tobacco and other addictive substances.

(h) Dollars spent now on well-coordinated programs that enable children to begin school healthy, ready and able to learn, and emotionally well developed will save billions of dollars in remedial programs, treatment services, social services, and our criminal justice system.

(i) The well-being of California's infants and children is endangered. Each year, tens of thousands of children are born exposed to tobacco, drugs, and alcohol. Cigarette smoking and other tobacco use by pregnant women and new parents represent a significant threat to the healthy development of infants and young children. Smoking is the leading preventable cause of death and disease in California.

(j) Studies published by the American Lung Association state: "Smoking during pregnancy accounts for an estimated 20 to 30 percent of low birth weight babies, up to 14 percent of preterm deliveries, and some 10 percent of all infant deaths. Maternal smoking has been linked to asthma among infants and young children."

(k) Research and studies demonstrate that low birth weight infants are particularly at risk for severe physical and developmental complications.

(*l*) Studies by the federal Environmental Protection Agency demonstrate an increased risk of sudden infant death syndrome (SIDS) in infants of mothers who smoke. The federal Environmental Protection Agency also estimates that secondhand smoke is responsible for between 150,000 and 300,000 lower respiratory tract infections in infants and children under 18 months of age annually, resulting in between 7,500 and 15,000 hospitalizations each year.

(m) The California Children and Families First Act of 1998 addresses these issues by facilitating the creation of a seamless system of integrated and comprehensive programs and services, and a funding base for the system with program and financial accountability, that will:

(1) Establish community-based programs to provide parental education and family support services relevant to effective childhood development. These services shall include education and skills training in nurturing and in avoidance

of tobacco, drugs, and alcohol during pregnancy. Emphasis will be on services not provided by existing programs and on the consolidation of existing programs and new services provided pursuant to this act into an integrated system from the consumer's perspective.

(2) Educate the public, using mass media, on the importance and the benefits of nurturing, health care, family support, and child care; and inform involved professionals and the general public about programs that focus on early childhood development.

(3) Educate the public, using mass media, on the dangers caused by smoking and other tobacco use by pregnant women to themselves and to infants and young children, and the dangers of secondhand smoke to all children.

(4) Encourage pregnant women and parents of young children to quit smoking.

(n) A 50-cent-per-pack increase in the state surtax on cigarettes and an equivalent increase in the state surtax on tobacco products to fund anti-smoking and early childhood development programs is necessary, appropriate, and in the public interest.

SEC. 3. Section 7 is added to Article XIII A of the Constitution, to read:

SEC. 7. Section 3 of this article does not apply to the California Children and Families First Act of 1998.

SEC. 4. Section 13 is added to Article XIII B of the Constitution, to read:

SEC. 13. "Appropriations subject to limitation" of each entity of government shall not include appropriations of revenue from the California Children and Families First Trust Fund created by the California Children and Families First Act of 1998. No adjustment in the appropriations limit of any entity of government shall be required pursuant to Section 3 as a result of revenue being deposited in or appropriated from the California Children and Families First Trust Fund. The surtax created by the California Children and Families First Act of 1998 shall not be considered General Fund revenues for the purposes of Section 8 of Article XVI.

SEC. 5. Division 108 (commencing with Section 130100) is added to the Health and Safety Code, to read:

DIVISION 108. CALIFORNIA CHILDREN AND FAMILIES FIRST PROGRAM

130100. There is hereby created a program in the state for the purposes of promoting, supporting, and improving the early development of children from the prenatal stage to five years of age. These purposes shall be accomplished through the establishment, institution, and coordination of appropriate standards, resources, and integrated and comprehensive programs emphasizing community awareness, education, nurturing, child care, social services, health care, and research.

(a) It is the intent of this act to facilitate the creation and implementation of an integrated, comprehensive, and collaborative system of information and services to enhance optimal early childhood development. This system should function as a network that promotes accessibility to all information and services from any entry point into the system. It is further the intent of this act to emphasize local decisionmaking, to provide for greater local flexibility in designing delivery systems, and to eliminate duplicate administrative systems.

(b) The programs authorized by this act shall be administered by the California Children and Families First Commission and by county children and families

first commissions. In administering this act, the state and county commissions shall use outcome-based accountability to determine future expenditures.

(c) This division shall be known and may be cited as the "California Children and Families First Act of 1998."

130105. The California Children and Families First Trust Fund is hereby created in the State Treasury.

(a) The California Children and Families First Trust Fund shall consist of moneys collected pursuant to the taxes imposed by Section 30131.2 of the Revenue and Taxation Code.

(b) All costs to implement this act shall be paid from moneys deposited in the California Children and Families First Trust Fund.

(c) The State Board of Equalization shall determine within one year of the passage of this act the effect that additional taxes imposed on cigarettes and tobacco products by this act has on the consumption of cigarettes and tobacco products in this state. To the extent that a decrease in consumption is determined by the State Board of Equalization to be the direct result of additional taxes imposed by this act, the State Board of Equalization shall determine the fiscal effect the decrease in consumption has on the funding of any Proposition 99 (the Tobacco Tax and Health Protection Act of 1988) state health-related education or research programs in effect as of November 1, 1998, and the Breast Cancer Fund programs that are funded by excise taxes on cigarettes and tobacco products. Funds shall be transferred from the California Children and Families First Trust Fund to those affected programs as necessary to offset the revenue decrease directly resulting from the imposition of additional taxes by this act. Such reimbursements shall occur, and at such times, as determined necessary to further the intent of this subdivision.

(d) Moneys shall be allocated and appropriated from the California Children and Families First Trust Fund as follows:

(1) Twenty percent shall be allocated and appropriated to separate accounts of the state commission for expenditure according to the following formula:

(A) Six percent shall be deposited in a Mass Media Communications Account for expenditures for communications to the general public utilizing television, radio, newspapers, and other mass media on subjects relating to and furthering the goals and purposes of this act, including, but not limited to, methods of nurturing and parenting that encourage proper childhood development, the informed selection of child care, information regarding health and social services, the prevention of tobacco, alcohol, and drug use by pregnant women, and the detrimental effects of secondhand smoke on early childhood development.

(B) Five percent shall be deposited in an Education Account for expenditures for programs relating to education, including, but not limited to, the development of educational materials, professional and parental education and training, and technical support for county commissions in the areas described in subparagraph (A) of paragraph (1) of subdivision (b) of Section 130125.

(C) Three percent shall be deposited in a Child Care Account for expenditures for programs relating to child care, including, but not limited to, the education and training of child care providers, the development of educational materials and guidelines for child care workers, and other areas described in subparagraph (B) of paragraph (1) of subdivision (b) of Section 130125.

(D) Three percent shall be deposited in a Research and Development Account for expenditures for the research and development of best practices and standards for all programs and services relating to early childhood development

established pursuant to this act, and for the assessment and quality evaluation of such programs and services.

(E) One percent shall be deposited in an Administration Account for expenditures for the administrative functions of the state commission.

(F) Two percent shall be deposited in an Unallocated Account for expenditure by the state commission for any of the purposes of this act described in Section 130100 provided that none of these moneys shall be expended for the administrative functions of the state commission.

(G) In the event that, for whatever reason, the expenditure of any moneys allocated and appropriated for the purposes specified in subparagraphs (A) to (F), inclusive, is enjoined by a final judgment of a court of competent jurisdiction, then those moneys shall be available for expenditure by the state commission for mass media communication emphasizing the need to eliminate smoking and other tobacco use by pregnant women, the need to eliminate smoking and other tobacco use by persons under 18 years of age, and the need to eliminate exposure to secondhand smoke.

(H) Any moneys allocated and appropriated to any of the accounts described in subparagraphs (A) to (F), inclusive, that are not encumbered or expended within any applicable period prescribed by law shall (together with the accrued interest on the amount) revert to and remain in the same account for the next fiscal period.

(2) Eighty percent shall be allocated and appropriated to county commissions in accordance with Section 130140.

(A) The moneys allocated and appropriated to county commissions shall be deposited in each local Children and Families First Trust Fund administered by each county commission, and shall be expended only for the purposes authorized by this act and in accordance with the county strategic plan approved by each county commission.

(B) Any moneys allocated and appropriated to any of the county commissions that are not encumbered or expended within any applicable period prescribed by law shall (together with the accrued interest on the amount) revert to and remain in the same local Children and Families First Trust Fund for the next fiscal period under the same conditions as set forth in subparagraph (A).

(e) All grants, gifts, or bequests of money made to or for the benefit of the state commission from public or private sources to be used for early childhood development programs shall be deposited in the California Children and Families First Trust Fund and expended for the specific purpose for which the grant, gift, or bequest was made. The amount of any such grant, gift, or bequest shall not be considered in computing the amount allocated and appropriated to the state commission pursuant to paragraph (1) of subdivision (d).

(f) All grants, gifts, or bequests of money made to or for the benefit of any county commission from public or private sources to be used for early childhood development programs shall be deposited in the local Children and Families First Trust Fund and expended for the specific purpose for which the grant, gift, or bequest was made. The amount of any such grant, gift, or bequest shall not be considered in computing the amount allocated and appropriated to the county commissions pursuant to paragraph (2) of subdivision (d).

130110. There is hereby established a California Children and Families First Commission composed of seven voting members and two ex officio members.

(a) The voting members shall be selected, pursuant to Section 130115, from persons with knowledge, experience, and expertise in early child development,

child care, education, social services, public health, the prevention and treatment of tobacco and other substance abuse, behavioral health, and medicine (including, but not limited to, representatives of statewide medical and pediatric associations or societies), upon consultation with public and private sector associations, organizations, and conferences composed of professionals in these fields.

(b) The Secretary of Health and Welfare and the Secretary of Child Development and Education, or their designees, shall serve as ex officio nonvoting members of the state commission.

130115. The Governor shall appoint three members of the state commission, one of whom shall be designated as chairperson. One of the Governor's appointees shall be either a county health officer or a county health executive. The Speaker of the Assembly and the Senate Rules Committee shall each appoint two members of the state commission. Of the members first appointed by the Governor, one shall serve for a term of four years, and two for a term of two years. Of the members appointed by the Speaker of the Assembly and the Senate Rules Committee, one appointed by the Speaker of the Assembly and the Senate Rules Committee shall serve for a period of four years with the other appointees to serve for a period of three years. Thereafter, all appointments shall be for four-year terms. No appointee shall serve as a member of the state commission for more than two four-year terms.

130120. The state commission shall, within three months after a majority of its voting members have been appointed, hire an executive director. The state commission shall thereafter hire such other staff as necessary or appropriate. The executive director and staff shall be compensated as determined by the state commission, consistent with moneys available for appropriation in the Administration Account. All professional staff employees of the state commission shall be exempt from civil service. The executive director shall act under the authority of, and in accordance with the direction of, the state commission.

130125. The powers and duties of the state commission shall include, but are not limited to, the following:

(a) Providing for statewide dissemination of public information and educational materials to members of the general public and to professionals for the purpose of developing appropriate awareness and knowledge regarding the promotion, support, and improvement of early childhood development.

(b) Adopting guidelines for an integrated and comprehensive statewide program of promoting, supporting, and improving early childhood development that enhances the intellectual, social, emotional, and physical development of children in California.

(1) The state commission's guidelines shall, at a minimum, address the following matters:

(A) Parental education and support services in all areas required for, and relevant to, informed and healthy parenting. Examples of parental education shall include, but are not limited to, prenatal and postnatal infant and maternal nutrition, education and training in newborn and infant care and nurturing for optimal early childhood development, parenting and other necessary skills, child abuse prevention, and avoidance of tobacco, drugs, and alcohol during pregnancy. Examples of parental support services shall include, but are not limited to, family support centers offering an integrated system of services required for the development and maintenance of self-sufficiency, domestic violence prevention and treatment, tobacco and other substance abuse control

and treatment, voluntary intervention for families at risk, and such other prevention and family services and counseling critical to successful early childhood development.

(B) The availability and provision of high quality, accessible, and affordable child care, both in-home and at child care facilities, that emphasizes education, training and qualifications of care providers, increased availability and access to child care facilities, resource and referral services, technical assistance for caregivers, and financial and other assistance to ensure appropriate child care for all households.

(C) The provision of child health care services that emphasize prevention, diagnostic screenings, and treatment not covered by other programs; and the provision of prenatal and postnatal maternal health care services that emphasize prevention, immunizations, nutrition, treatment of tobacco and other substance abuse, general health screenings, and treatment services not covered by other programs.

(2) The state commission shall conduct at least one public hearing on its proposed guidelines before they are adopted.

(3) The state commission shall, on at least an annual basis, periodically review its adopted guidelines and revise them as may be necessary or appropriate.

(c) Defining the results to be achieved by the adopted guidelines, and collecting and analyzing data to measure progress toward attaining such results.

(d) Providing for independent research, including the evaluation of any relevant programs, to identify the best standards and practices for optimal early childhood development, and establishing and monitoring demonstration projects.

(e) Soliciting input regarding program policy and direction from individuals and entities with experience in early childhood development, facilitating the exchange of information between such individuals and entities, and assisting in the coordination of the services of public and private agencies to deal more effectively with early childhood development.

(f) Providing technical assistance to county commissions in adopting and implementing county strategic plans for early childhood development.

(g) Reviewing and considering the annual audits and reports transmitted by the county commissions and, following a public hearing, adopting a written report that consolidates, summarizes, analyzes, and comments on those annual audits and reports.

(h) Applying for gifts, grants, donations, or contributions of money, property, facilities, or services from any person, corporation, foundation, or other entity, or from the state or any agency or political subdivision thereof, or from the federal government or any agency or instrumentality thereof, in furtherance of a statewide program of early childhood development.

(i) Entering into such contracts as necessary or appropriate to carry out the provisions and purposes of this act.

(j) Making recommendations to the Governor and the Legislature for changes in state laws, regulations, and services necessary or appropriate to carry out an integrated and comprehensive program of early childhood development in an effective and cost-efficient manner.

130130. Procedures for the conduct of business by the state commission not specified in this act shall be contained in bylaws adopted by the state commission. A majority of the voting members of the state commission shall

constitute a quorum. All decisions of the state commission, including the hiring of the executive director, shall be by a majority of four votes.

130135. Voting members of the state commission shall not be compensated for their services, except that they shall be paid reasonable per diem and reimbursement of reasonable expenses for attending meetings and discharging other official responsibilities as authorized by the state commission.

130140. Any county or counties developing, adopting, promoting, and implementing local early childhood development programs consistent with the goals and objectives of this act shall receive moneys pursuant to paragraph (2) of subdivision (d) of Section 130105 in accordance with the following provisions:

(a) For the period between January 1, 1999 and June 30, 2000, county commissions shall receive the portion of the total moneys available to all county commissions equal to the percentage of the number of births recorded in the relevant county (for the most recent reporting period) in proportion to the entire number of births recorded in California (for the same period), provided that each of the following requirements has first been satisfied:

(1) The county's board of supervisors has adopted an ordinance containing the following minimum provisions:

(A) The establishment of a county children and families first commission. The county commission shall be appointed by the board of supervisors and shall consist of at least five but not more than nine members.

(i) Two members of the county commission shall be from among the county health officer and persons responsible for management of the following county functions: children's services, public health services, behavioral health services, social services, and tobacco and other substance abuse prevention and treatment services.

(ii) One member of the county commission shall be a member of the board of supervisors.

(iii) The remaining members of the county commission shall be from among the persons described in clause (i) and persons from the following categories: recipients of project services included in the county strategic plan; educators specializing in early childhood development; representatives of a local child care resource or referral agency, or a local child care coordinating group; representatives of a local organization for prevention or early intervention for families at risk; representatives of community-based organizations that have the goal of promoting nurturing and early childhood development; representatives of local school districts; and representatives of local medical, pediatric, or obstetric associations or societies.

(B) The manner of appointment, selection, or removal of members of the county commission, the duration and number of terms county commission members shall serve, and any other matters that the board of supervisors deems necessary or convenient for the conduct of the county commission's activities, provided that members of the county commission shall not be compensated for their services, except they shall be paid reasonable per diem and reimbursement of reasonable expenses for attending meetings and discharging other official responsibilities as authorized by the county commission.

(C) The requirement that the county commission adopt an adequate and complete county strategic plan for the support and improvement of early childhood development within the county.

(i) The county strategic plan shall be consistent with, and in furtherance of the purposes of, this act and any guidelines adopted by the state commission

pursuant to subdivision (b) of Section 130125 that are in effect at the time the plan is adopted.

(ii) The county strategic plan shall, at a minimum, include the following: a description of the goals and objectives proposed to be attained; a description of the programs, services, and projects proposed to be provided, sponsored, or facilitated; and a description of how measurable outcomes of such programs, services, and projects will be determined by the county commission using appropriate reliable indicators. No county strategic plan shall be deemed adequate or complete until and unless the plan describes how programs, services, and projects relating to early childhood development within the county will be integrated into a consumer-oriented and easily accessible system.

(iii) The county commission shall, on at least an annual basis, be required to periodically review its county strategic plan and to revise the plan as may be necessary or appropriate.

(D) The requirement that the county commission conduct at least one public hearing on its proposed county strategic plan before the plan is adopted.

(E) The requirement that the county commission conduct at least one public hearing on its periodic review of the county strategic plan before any revisions to the plan are adopted.

(F) The requirement that the county commission submit its adopted county strategic plan, and any subsequent revisions thereto, to the state commission.

(G) The requirement that the county commission prepare and adopt an annual audit and report pursuant to Section 130150. The county commission shall conduct at least one public hearing prior to adopting any annual audit and report.

(H) The requirement that the county commission conduct at least one public hearing on each annual report by the state commission prepared pursuant to subdivision (b) of Section 130150.

(I) Two or more counties may form a joint county commission, adopt a joint county strategic plan, or implement joint programs, services, or projects.

(2) The county's board of supervisors has established a county commission and has appointed a majority of its members.

(3) The county has established a local Children and Families First Trust Fund pursuant to subparagraph (A) of paragraph (2) of subdivision (d) of Section 130105.

(b) Notwithstanding any provision of this act to the contrary, no moneys made available to county commissions under subdivision (a) shall be expended to provide, sponsor, or facilitate any programs, services, or projects for early childhood development until and unless the county commission has first adopted an adequate and complete county strategic plan that contains the provisions required by clause (ii) of subparagraph (C) of paragraph (1) of subdivision (a).

(c) In the event that any county elects not to participate in the California Children and Families First Program, the moneys remaining in the California Children and Families First Trust Fund shall be reallocated and reappropriated to participating counties in the following fiscal year.

(d) For the fiscal year commencing on July 1, 2000, and for each fiscal year thereafter, county commissions shall receive the portion of the total moneys available to all county commissions equal to the percentage of the number of births recorded in the relevant county (for the most recent reporting period) in proportion to the number of births recorded in all of the counties participating

in the California Children and Families First Program (for the same period), provided that each of the following requirements has first been satisfied:

(1) The county commission has, after the required public hearings, adopted an adequate and complete county strategic plan conforming to the requirements of subparagraph (C) of paragraph (1) of subdivision (a), and has submitted the plan to the state commission.

(2) The county commission has conducted the required public hearings, and has prepared and submitted all audits and reports required pursuant to Section 130150.

(3) The county commission has conducted the required public hearings on the state commission annual reports prepared pursuant to subdivision (b) of Section 130150.

(e) In the event that any county elects not to continue participation in the California Children and Families First Program, any unencumbered and unexpended moneys remaining in the local Children and Families First Trust Fund shall be returned to the California Children and Families First Trust Fund for reallocation and reappropriation to participating counties in the following fiscal year.

130145. The state commission and each county commission shall establish one or more advisory committees to provide technical and professional expertise and support for any purposes that will be beneficial in accomplishing the purposes of this act. Each advisory committee shall meet and shall make recommendations and reports as deemed necessary or appropriate.

130150. On or before October 15 of each year, the state commission and each county commission shall conduct an audit of, and issue a written report on the implementation and performance of, their respective functions during the preceding fiscal year, including, at a minimum, the manner in which funds were expended, the progress toward, and the achievement of, program goals and objectives, and the measurement of specific outcomes through appropriate reliable indicators.

(a) The audits and reports of each county commission shall be transmitted to the state commission.

(b) The state commission shall, on or before January 31 of each year, prepare a written report that consolidates, summarizes, analyzes, and comments on the annual audits and reports submitted by all of the county commissions for the preceding fiscal year. This report by the state commission shall be transmitted to the Governor, the Legislature, and each county commission.

(c) The state commission shall make copies of each of its annual audits and reports available to members of the general public on request and at no cost. The state commission shall furnish each county commission with copies of those documents in a number sufficient for local distribution by the county commission to members of the general public on request and at no cost.

(d) Each county commission shall make copies of its annual audits and reports available to members of the general public on request and at no cost.

130155. The following definitions apply for purposes of this act:

(a) "Act" means the California Children and Families First Act of 1998.

(b) "County commission" means each county children and families first commission established in accordance with Section 130140.

(c) "County strategic plan" means the plan adopted by each county children and families first commission and submitted to the California Children and Families First Commission pursuant to Section 130140.

(d) "State commission" means the California Children and Families First Commission established in accordance with Section 130110.

SEC. 6. Article 3 (commencing with Section 30131) is added to Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation Code, to read:

Article 3. California Children and Families First Trust Fund Account

30131. Notwithstanding Section 30122, the California Children and Families First Trust Fund is hereby created in the State Treasury for the exclusive purpose of funding those provisions of the California Children and Families First Act of 1998 that are set forth in Division 108 (commencing with Section 130100) of the Health and Safety Code.

30131.1. The following definitions apply for purposes of this article:

(a) "Cigarette" has the same meaning as in Section 30003, as it read on January 1, 1997.

(b) "Tobacco products" includes, but is not limited to, all forms of cigars, smoking tobacco, chewing tobacco, snuff, and any other articles or products made of, or containing at least 50 percent, tobacco, but does not include cigarettes.

30131.2. (a) In addition to the taxes imposed upon the distribution of cigarettes by Article 1 (commencing with Section 30101) and Article 2 (commencing with Section 30121) and any other taxes in this chapter, there shall be imposed an additional surtax upon every distributor of cigarettes at the rate of twenty-five mills ($0.025) for each cigarette distributed.

(b) In addition to the taxes imposed upon the distribution of tobacco products by Article 1 (commencing with Section 30101) and Article 2 (commencing with Section 30121), and any other taxes in this chapter, there shall be imposed an additional tax upon every distributor of tobacco products, based on the wholesale cost of these products, at a tax rate, as determined annually by the State Board of Equalization, which is equivalent to the rate of tax imposed on cigarettes by subdivision (a).

30131.3. Except for payments of refunds made pursuant to Article 1 (commencing with Section 30361) of Chapter 6, reimbursement of the State Board of Equalization for expenses incurred in the administration and collection of the taxes imposed by Section 30131.2, and transfers of funds in accordance with subdivision (c) of Section 130105 of the Health and Safety Code, all moneys raised pursuant to the taxes imposed by Section 30131.2 shall be deposited in the California Children and Families First Trust Fund and are continuously appropriated for the exclusive purpose of the California Children and Families First Program established by Division 108 (commencing with Section 130100) of the Health and Safety Code.

30131.4. All moneys raised pursuant to taxes imposed by Section 30131.2 shall be appropriated and expended only for the purposes expressed in the California Children and Families First Act, and shall be used only to supplement existing levels of service and not to fund existing levels of service. No moneys in the California Children and Families First Trust Fund shall be used to supplant state or local General Fund money for any purpose.

30131.5. The annual determination required of the State Board of Equalization pursuant to subdivision (b) of Section 30131.2 shall be made based on the wholesale cost of tobacco products as of March 1, and shall be effective during the state's next fiscal year.

30131.6. The taxes imposed by Section 30131.2 shall be imposed on every cigarette and on tobacco products in the possession or under the control of every

dealer and distributor on and after 12:01 a.m. on January 1, 1999, pursuant to rules and regulations promulgated by the State Board of Equalization.

SEC. 7. Effective date. Notwithstanding the imposition of the taxes authorized by Section 30131.2 of the Revenue and Taxation Code as of January 1, 1999, this act shall take effect and become operative on the date that the Secretary of State certifies the results of the election at which this act was approved.

SEC. 8. Amendment. This act may be amended only by a vote of two-thirds of the membership of both houses of the Legislature. All amendments to this act shall be to further the act and must be consistent with its purposes.

SEC. 9. Liberal construction. The provisions of this act shall be liberally construed to effectuate its purposes of promoting, supporting, and improving early childhood development from the prenatal stage to five years of age.

SEC. 10. No conflict with other laws. The provisions of this act are intended to be in addition to and not in conflict with any other initiative measure that may be adopted by the people at the November 1998 election, and the provisions of this act shall be interpreted and construed so as to avoid conflicts with any such measure whenever possible.

SEC. 11. Severability. If any provision of this act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of this act are severable.

INITIATIVE STATUTES

Number on ballot

4. **Trapping Practices. Bans Use of Specified Traps and Animal Poisons.**

[Submitted by the initiative and approved by electors November 3, 1998.]

PROPOSED LAW

SECTION 1. Section 3003.1 is added to the Fish and Game Code, to read:

3003.1. Notwithstanding Sections 1001, 1002, 4002, 4004, 4007, 4008, 4009.5, 4030, 4034, 4042, 4152, 4180, or 4181:

(a) It is unlawful for any person to trap for the purposes of recreation or commerce in fur any fur-bearing mammal or nongame mammal with any body-gripping trap. A body-gripping trap is one that grips the mammal's body or body part, including, but not limited to, steel-jawed leghold traps, padded-jaw leghold traps, conibear traps, and snares. Cage and box traps, nets, suitcase-type live beaver traps, and common rat and mouse traps shall not be considered body-gripping traps.

(b) It is unlawful for any person to buy, sell, barter, or otherwise exchange for profit, or to offer to buy, sell, barter, or otherwise exchange for profit, the raw fur, as defined by Section 4005, of any fur-bearing mammal or nongame mammal that was trapped in this state, with a body-gripping trap as described in subdivision (a).

(c) It is unlawful for any person, including an employee of the federal, state, county, or municipal government, to use or authorize the use of any steel-jawed leghold trap, padded or otherwise, to capture any game mammal, fur-bearing mammal, nongame mammal, protected mammal, or any dog or cat.

The prohibition in this subdivision does not apply to federal, state, county, or municipal government employees or their duly authorized agents in the extraordinary case where the otherwise prohibited padded-jaw leghold trap is the only method available to protect human health or safety.

(d) For purposes of this section, fur-bearing mammals, game mammals, nongame mammals, and protected mammals are those mammals so defined by statute on January 1, 1997.

SEC. 2. Section 3003.2 is added to the Fish and Game Code, to read:

3003.2. Notwithstanding Sections 4003, 4152, 4180, or 4180.1 of this code or Section 14063 of the Food and Agricultural Code, no person, including an employee of the federal, state, county, or municipal government, may poison or attempt to poison any animal by using sodium fluoroacetate, also known as Compound 1080, or sodium cyanide.

SEC. 3. Section 12005.5 is added to the Fish and Game Code, to read:

12005.5. Notwithstanding Sections 12000 and 12002, a violation of Section 3003.1 or 3003.2, or any rule or regulation adopted pursuant thereto, is punishable by a fine of not less than three hundred dollars ($300) or more than two thousand dollars ($2,000), or by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment. The Legislature may increase, but may not decrease, these penalties.

Number on ballot

5. **Tribal-State Gaming Compacts. Tribal Casinos.**

[Submitted by the initiative and approved by electors November 3, 1998.]

PROPOSED LAW

SECTION 1. Title 16 (commencing with Section 98000) is added to the Government Code, to read:

TITLE 16. STATE-TRIBAL AGREEMENTS GOVERNING INDIAN GAMING

CHAPTER 1. THE TRIBAL GOVERNMENT GAMING AND ECONOMIC SELF-SUFFICIENCY ACT OF 1998

98000. This chapter shall be known and may be cited as "The Tribal Government Gaming and Economic Self-Sufficiency Act of 1998."

98001. (a) The people of the State of California find that, historically, Indian tribes within the state have long suffered from high rates of unemployment and inadequate educational, housing, elderly care, and health care opportunities, while typically being located on lands that are not conducive to economic development in order to meet those needs. Federal law provides a statutory basis for conducting licensed and regulated tribal government gaming on, and limited to, qualified Indian lands, as a means of strengthening tribal self-sufficiency through the creation of jobs and tribal economic development. Federal law also provides that certain forms of gaming, known as "class III gaming," will be the subject of an agreement between a tribe and the state (a "Tribal-State compact"), pursuant to which that gaming will be governed.

(b) The people of the state find that uncertainties have developed over various issues concerning class III gaming and the development of Tribal-State compacts between the state and tribes, and that those uncertainties have led to

delays and considerable expense. The Tribal-State compact terms set forth in Section 98004 (the "Gaming Compact"), including the geographic confinement of that gaming to certain tribal lands, the agreement and limitations on the kinds of class III gaming in which a tribe operating thereunder may be engaged, and the regulation and licensing required thereunder, are intended to resolve those uncertainties in an efficient and cost-effective way, while meeting the basic and mutual needs of the state and the tribes without undue delay. The resolution of uncertainty regarding class III gaming in California, the generation of employment and tribal economic development that will result therefrom, and the limitations on the growth of gaming in California that are inherent therein, are in the best and immediate interest of all citizens of the state. This chapter has been enacted as a matter of public policy and in recognition that it fulfills important state needs. All of the factors the state could consider in negotiating a Tribal-State compact under federal law have been taken into account in offering to tribes the terms set forth in the Gaming Compact.

(c) The people of the state further find that casinos of the type currently operating in Nevada and New Jersey are materially different from the tribal gaming facilities authorized under this chapter, including those in which the gaming activities under the Gaming Compact are conducted, in that the casinos in those states (1) commonly offer their patrons a broad spectrum of house-banked games, including but not limited to house-banked card games, roulette, dice games, and slot machines that dispense coins or currency, none of which games are authorized under this chapter; and (2) are owned by private companies, individuals, or others that are not restricted on how their profits may be expended, whereas tribal governments must be the primary beneficiaries of the gaming facilities under this chapter and the Gaming Compact, and are limited to using their gaming revenues for various tribal purposes, including tribal government services and programs such as those that address reservation housing, elderly care, education, economic development, health care, and other tribal programs and needs, in conformity with federal law.

98002. (a) The Governor is authorized to execute on behalf of this state a Gaming Compact containing the terms set forth in Section 98004, and shall do so as a ministerial act, without preconditions, within 30 days after receiving a request from a tribe, accompanied by or in the form of a duly enacted resolution of the tribe's governing body, to enter into such a compact.

(b) If any federally recognized tribe having jurisdiction over Indian lands in California requests that the Governor enter into negotiations for a Tribal-State compact under federal law, including but not limited to the Indian Gaming Regulatory Act (25 U.S.C. Sec. 2701 et seq.) (hereafter "IGRA"), on terms different than those prescribed in the Gaming Compact in Section 98004, the Governor shall enter into those negotiations pursuant to that federal law and without preconditions, and is authorized to reach agreement and execute that compact on behalf of the state, which authority shall not require action by the Legislature so long as the compact does not expand the scope of class III gaming permitted under a Gaming Compact under this chapter, create or confer additional powers on any agency of this state that are inconsistent with the terms of a Gaming Compact, or infringe upon the power of the Legislature to appropriate and authorize the expenditure of funds from the State Treasury. Any action by the Legislature that expands the scope of class III gaming permitted in any Tribal-State compact between the state and a tribe beyond that authorized

and permitted in the Gaming Compact set forth in Section 98004 may not be deemed to be in conflict with, or prohibited by, this chapter.

(c) The Governor is authorized and directed to execute, as a ministerial act on behalf of the state, any additional documents that may be necessary to implement this chapter or any Tribal-State compact entered into pursuant to this chapter. In the event that federal law regarding the process for entry into or approval of Tribal-State gaming compacts is changed in any way that would require a change in any procedure under this chapter in order for a Tribal-State gaming compact to become effective, this chapter shall be deemed amended to conform to and incorporate that changed federal law.

98003. Any state department or agency, or other subdivision of the state, providing gaming regulatory services to a tribe pursuant to the terms of this chapter, including a Gaming Compact entered into hereunder, is authorized to require and receive reimbursement from the tribe for the actual and reasonable costs of those services in accordance with a fee schedule to be agreed to by the tribe and the state that is based on what the state gaming agency reasonably charges other government agencies for comparable services. Any funds received from a tribe in reimbursement for those services are hereby continuously appropriated to that department, agency, or subdivision for those purposes. Any disputes concerning the reasonableness of any claim for reimbursement shall be resolved in accordance with the dispute resolution procedures set forth in the Gaming Compact.

98004. The State of California hereby offers to any federally recognized Indian tribe that is recognized by the Secretary of the Interior as having jurisdiction over Indian lands in California that are eligible for gaming under IGRA, and any such tribe may request, and enter into with the state, a Gaming Compact containing the following terms and conditions:

"TRIBAL-STATE GAMING COMPACT

Between the
[OFFICIAL NAME OF TRIBE],
a federally recognized Indian Tribe,
and the
STATE OF CALIFORNIA

This Tribal-State Gaming Compact is entered into on a government-to-government basis by and between the [Official Name of Tribe], a federally recognized sovereign Indian tribe (hereafter "Tribe"), and the State of California, a sovereign State of the United States (hereafter "State"), pursuant to the Indian Gaming Regulatory Act of 1988 (P.L. 100-497, codified at 18 U.S.C. Sec. 1166 et seq. and 25 U.S.C. Sec. 2701 et seq.) (hereafter "IGRA"), and any successor statute or amendments, and the Tribal Government Gaming and Economic Self-Sufficiency Act of 1998 (Chapter 1 (commencing with Section 98000) of Title 16 of the Government Code).

Section 1.0. PURPOSES AND OBJECTIVES. The terms of this Gaming Compact are designed and intended to: (a) Evidence the good will and cooperation of the Tribe and State in fostering a mutually respectful government-to-government relationship that will serve the mutual interests of the parties.

(b) Develop and implement a means of regulating class III gaming on the Tribe's Indian lands to ensure its fair and honest operation in accordance with IGRA, and, through that regulated class III gaming, enable the Tribe to develop self-sufficiency, promote tribal economic development, and generate jobs and

revenues to support the Tribe's government and governmental services and programs.

(c) Promote ethical practices in conjunction with that gaming, through the licensing and control of persons and entities employed in, or providing goods and services to, the Tribe's gaming operation and protecting against the presence or participation of persons whose criminal backgrounds, reputations, character, or associations make them unsuitable for participation in gaming, thereby maintaining a high level of integrity in government gaming.

Sec. 2.0. DEFINITIONS

Sec. 2.1. "Act" means the Tribal Government Gaming and Economic Self-Sufficiency Act of 1998 (Section 98000 et seq. of the Government Code).

Sec. 2.2. "Applicant" means an individual or entity that applies for a Tribal license or State certification.

Sec. 2.3. "Class III gaming" means the forms of class III gaming defined as such in 25 U.S.C. Sec. 2703(8) and by regulations of the National Indian Gaming Commission.

Sec. 2.4. "Gaming activities" means the class III gaming activities authorized under this Gaming Compact.

Sec. 2.5. "Gaming Compact" means this compact.

Sec. 2.6. "Gaming device" means any electronic, electromechanical, electrical, or video device that, for consideration, permits: individual play with or against that device or the participation in any electronic, electromechanical, electrical, or video system to which that device is connected; the playing of games thereon or therewith, including, but not limited to, the playing of facsimiles of games of chance or skill; the possible delivery of, or entitlement by the player to, a prize or something of value as a result of the application of an element of chance; and a method for viewing the outcome, prize won, and other information regarding the playing of games thereon or therewith.

Sec. 2.7. "Gaming employee" means any person who (a) operates, maintains, repairs, assists in any gaming activity, or is in any way responsible for supervising gaming activities or persons who conduct, operate, account for, or supervise any gaming activity, (b) is in a category under federal or tribal gaming law requiring licensing, or (c) is a person whose employment duties require or authorize access to areas of the gaming facility that are not open to the public. In defining those categories of persons who are required to be licensed under tribal gaming law, the Tribe shall consider the inclusion of persons who are required to be licensed pursuant to state gaming law.

Sec. 2.8. "Gaming facility" means any building or room in which class III gaming activities or gaming operations occur, or in which the business records, receipts, or other funds of the gaming operation are maintained (but excluding offsite facilities primarily dedicated to storage of those records, and financial institutions), and all rooms, buildings, and areas, including parking lots, walkways, and means of ingress and egress associated therewith, provided that nothing herein prevents the conduct of class II gaming (as defined under IGRA) therein.

Sec. 2.9. "Gaming operation" means the business enterprise that offers and operates gaming activities.

Sec. 2.10. "Gaming ordinance" means a tribal ordinance or resolution duly authorizing the conduct of gaming activities on the Tribe's Indian lands and approved under IGRA.

Sec. 2.11. "Gaming resources" means any goods or services used in connection with gaming activities, including, but not limited to, equipment, furniture, gambling devices and ancillary equipment, implements of gaming activities such as playing cards and dice, furniture designed primarily for gaming activities, maintenance or security equipment and services, and gaming consulting services. "Gaming resources" does not include professional accounting and legal services.

Sec. 2.12. "Gaming resource supplier" means any manufacturer, distributor, supplier, vendor, lessor, or other purveyor of gaming resources to the gaming operation or gaming facility, provided that the Tribal gaming agency may exclude any such purveyor if the subject equipment or furniture is not specifically designed for, and is distributed generally for use other than in connection with, gaming activities.

Sec. 2.13. "IGRA" means the Indian Gaming Regulatory Act of 1988 (P.L. 100-497, 18 U.S.C. Sec. 1166 et seq. and 25 U.S.C. Sec. 2701 et seq.) any amendments and successors thereto, and all regulations promulgated thereunder.

Sec. 2.14. "Management contractor" means any person with whom the Tribe has contracted for the management of any gaming activity or gaming facility, including, but not limited to, any person who would be regarded as a management contractor under IGRA.

Sec. 2.15. "Net win" means the wagering revenue from gaming activities retained by the Tribe after prizes or winnings have been paid to players or to pools dedicated to the payment of those prizes and winnings, and prior to the payment of operating or other expenses.

Sec. 2.16. "Players' pool prize system" means one or more segregated pools of funds that have been collected from player wagers, that are irrevocably dedicated to the prospective award of prizes in authorized gaming activities, and in which the house neither has nor can acquire any interest. The Tribe may set and collect a fee from players on a per play, per amount wagered, or time-period basis, and may seed the player pools in the form of loans or promotional expenses, provided that seeding is not used to pay prizes previously won.

Sec. 2.17. "State" means the State of California.

Sec. 2.18. "State gaming agency" means the person, agency, board, commission, or official that the State duly authorizes to fulfill the functions assigned to it under this Gaming Compact. As of the effective date of this Act, this agency is the entity or entities authorized to investigate, approve, and regulate gaming licenses pursuant to the Gambling Control Act (Chapter 5 (commencing with Section 19800) of Division 8 of the Business and Professions Code) or its successors. In the event no agency is authorized to conduct this function, the State shall designate such an agency by statute. If the State fails to designate an agency authorized to investigate, approve, and regulate gaming licenses, any function assigned to the State gaming agency in this Gaming Compact shall be assumed by the Tribal gaming agency until the State so designates an agency as provided herein.

Sec. 2.19. "Tribal Chairperson" means the person duly elected or selected under the Tribe's organic documents, customs, or traditions to serve as the primary spokesperson for the Tribe.

Sec. 2.20. "Tribal gaming agency" means the person, agency, board, committee, commission, or council designated under tribal law, including, but not limited to, an intertribal gaming regulatory agency approved to fulfill those

functions by the National Indian Gaming Commission, as primarily responsible for carrying out the Tribe's regulatory responsibilities under IGRA and the Tribal gaming ordinance. No person employed in, or in connection with, the management, supervision, or conduct of any gaming activity may be a member or employee of the Tribal gaming agency.

Sec. 2.21. "Tribal gaming terminal" means a gaming device that does not dispense coins or currency and is not activated by a handle.

Sec. 2.22. "Tribe" means the [official name of Tribe], a federally recognized Indian tribe.

Sec. 3.0. CLASS III GAMING AUTHORIZED AND PERMITTED. The Tribe is hereby authorized and permitted to engage in the gaming activities expressly referred to in Section 4.0.

Sec. 4.0. SCOPE OF CLASS III GAMING

Sec. 4.1. Authorized and Permitted Class III Gaming. To the extent regarded as forms or types of class III gaming, the Tribe is hereby authorized and permitted to operate the following gaming activities under the terms and conditions set forth in this Gaming Compact:

(a) The operation of Tribal gaming terminals, provided that such devices shall meet the technical standards adopted pursuant to Section 8.1.15 and shall pay prizes solely in accordance with a players' pool prize system.

(b) The operation of any card games that were actually operated in any tribal gaming facility in California on or before January 1, 1998, and are not within class II of IGRA (which class II games are not affected by this Gaming Compact), provided that such non-class II card games shall pay prizes solely in accordance with a players' pool prize system.

(c) The operation of any lottery game, including, but not limited to, drawings, raffles, match games, and instant lottery ticket games.

(d) The simulcasting and offering of off-track betting on horse races, if offered in accordance with the terms and conditions of the Tribal-State compact between the State and the Sycuan Band of Mission Indians that existed on March 31, 1997 ("Sycuan compact"), the terms of which shall be adjusted for northern California racing if required by the geographic location of the Tribe, and which compact is hereby incorporated by reference on the effective date of this Gaming Compact, unless the Tribe elects to adopt the provisions of an existing compact pursuant to the next sentence. If the Tribe and the State have already entered into a compact governing off-track wagering, that compact, at the Tribe's option, may continue in full force and effect as the off-track wagering provisions intended by this section, or the Sycuan compact terms and conditions may be substituted therefor. The Tribe may notify the State, at the time the notice under Section 98002 of the Act is given, or at any later date as the Tribe may deem appropriate, of its election with regard to which off-track wagering compact it has elected to incorporate herein. With regard to any Tribal-State compact governing off-track wagering, including this Gaming Compact, if the State lacks jurisdiction under federal law to collect a license fee or other charge on wagers placed at a tribal facility, which fee or charge would ordinarily be collected on wagers at nontribal facilities, an amount equal to that fee or charge shall be deducted from any off-track wagers made at the Tribe's facility and shall be distributed to the Tribe.

Sec. 4.2. Authorized Gaming Facilities. The Tribe may establish and operate gaming facilities in which the gaming activities authorized under this Gaming Compact may be conducted, provided that the facilities are located on

Indian lands within California over which the Tribe has jurisdiction, and qualify under federal law as lands upon which gaming can lawfully be conducted. The Tribe may combine and operate in those gaming facilities any forms and kinds of gaming permitted under law, except to the extent limited under IGRA or the Tribe's gaming ordinance.

Sec. 5.0. TRIBAL, STATE, AND LOCAL TRUST FUNDS

Sec. 5.1. Conditional Obligation to Contribute to Trust Funds; Contribution Formula. (a) The parties acknowledge that the operation of Tribal gaming terminals authorized under this Gaming Compact is expected to occupy a unique place in gaming within the State that is material to the ability of the Tribe and other tribal governments operating under similar compacts to achieve the economic development and other goals intended by IGRA. The Tribe therefore agrees to make the contributions to the trust funds described in Sections 5.2, 5.3, and 5.4, only for as long as it and other tribes that have entered into Gaming Compacts are not deprived of that unique opportunity. Accordingly, in the event that any other person or entity, including, but not limited to, the California State Lottery, lawfully operates gaming devices within the State at any time after January 2, 1998, any and all obligations by the Tribe to make the trust fund contributions required under Sections 5.2, 5.3, and 5.4 shall immediately and permanently cease and terminate. For the purposes of this section only, no equipment or type of game played thereon or therewith that was offered by the California State Lottery or any race track in California prior to January 2, 1998, may be deemed to cause the cessation and termination of those trust fund contributions.

(b) The contributions due under Sections 5.2, 5.3, and 5.4 shall be determined and made on a calendar quarter basis, by first determining the total number of all Tribal gaming terminals operated by a Tribe during a given quarter ("Quarterly Terminal Base"). Notwithstanding anything in this Section 5.0 to the contrary, the Tribe shall have no obligation to make any contribution to any trust fund on the net win derived from the first 200 terminals in the Quarterly Terminal Base; shall contribute at one-half of the percentage rates specified in Sections 5.2, 5.3, and 5.4 on the net win derived from the next 200 terminals in the Quarterly Terminal Base; and shall contribute at the full percentage rates specified in the above sections on the net win derived from any additional terminals in the Quarterly Terminal Base. In making those computations, the total net win from all terminals in the Quarterly Terminal Base during a given quarter shall be included and evenly divided among all such terminals ("Average Terminal Net Win"), regardless of the actual performance or net win of any particular terminal. The Average Terminal Net Win shall be used as the basis for calculating the foregoing exclusions or reductions that are based on the number of terminals in the Quarterly Terminal Base.

Sec. 5.2. Nongaming Tribal Assistance Fund.

Sec. 5.2.1. The Tribe shall participate in a trust fund with all other tribes, if any, that enter into Gaming Compacts under Section 98004 of the Act, into which it shall deposit 2 percent of its net win from Tribal gaming terminals each calendar quarter. The trust fund shall be distributed on an equitable basis for education, economic development, cultural preservation, health care, and other tribal purposes to federally recognized tribes located in California that have not participated in any form of gaming within the 12-month period preceding the anticipated receipt of such trust funds.

Sec. 5.2.2. The trust shall have a board of 12 trustees, consisting of one representative from each of three federally recognized tribes in each federal judicial district in California, elected by nomination as set forth below and majority vote of those tribal representatives attending a meeting at which all federally recognized tribes in the district have been given at least 15 days' written notice to attend. Each such tribe shall have one vote. The State shall assist the trust fund in assuring that adequate notice is given to all tribes who are to be represented at the meeting. Two of the trustees from each district shall consist of representatives of tribes in the district that have entered into Gaming Compacts under the Act, and one trustee shall be from a nongaming tribe. If there are no tribes that fit into one category, the trustee positions shall be filled by the other category of tribes. Gaming tribes shall nominate and elect the gaming tribe representatives, and nongaming tribes shall nominate and elect the nongaming tribe representative. Trustees shall serve for two-year terms, and shall receive reimbursement for reasonable costs actually incurred to attend meetings and serve as a trustee that have been approved by the board of trustees.

Sec. 5.2.3. All contributions to the fund shall be combined on a statewide basis and shall be distributed from the trust fund on a quarterly basis statewide in accordance with a fair and equitable formula established by the trustees by majority vote. All moneys in the trust fund shall be distributed annually, less reasonable costs of administering the trust fund, which may not exceed 5 percent of the moneys contributed to the trust fund in each year, and pursuant to a budget approved by the board of trustees.

Sec. 5.2.4. The first meeting of the trustees shall take place within the earlier of 60 days after at least three Gaming Compacts have become effective in the applicable federal judicial district, or six months following the effective date of the first Gaming Compact in that district. Distributions that are due from the Tribe prior to the formal creation of the trust fund specified herein shall be held in trust by the Tribe for such purposes.

Sec. 5.2.5. Contributions to the fund from the Tribe shall be made on the 15th day of the month following the close of the second calendar quarter in which this Gaming Compact has been in effect, based on the net win in the first calendar quarter of operations under the Gaming Compact derived from all Tribal gaming terminals in the Quarterly Terminal Base, and on the 15th day of the month following the close of each calendar quarter thereafter (July 15, October 15, January 15, and April 15; hereafter "contribution dates") based on the second preceding calendar quarter net win. For example, if this Gaming Compact becomes effective on October 10, the first contribution will be due on April 15, based on the total net win from Tribal gaming terminals in the Quarterly Terminal Base for the calendar quarter ending December 31. The next contribution date will be July 15, for the quarter ending March 31, and so forth.

Sec. 5.3. Statewide Trust Fund.

Sec. 5.3.1. The Tribe shall participate in a trust fund with the other Gaming Compact tribes, if any, into which it shall deposit, on a quarterly basis on each contribution date, an amount equal to 3 percent of the net win from the Tribal gaming terminals in the Quarterly Terminal Base. Except as otherwise provided herein, the creation of the trust, board of trustees, and method for making contributions and distributions shall be identical to the manner in which contributions are made, trust funds are distributed, and the board of trustees is

created and administered under Section 5.2, provided that nongaming tribes may not be represented or vote for trustees on the board.

Sec. 5.3.2. For each quarter, the board of trustees shall determine, based on a formula, established with the approval of the State, that takes into account the population, ratio, and emergency medical needs of persons over 55 years of age in each county, a method for distributing annually all funds in the trust, except for reasonable administrative expenses (including said trustee costs) not to exceed 5 percent of the amounts contributed to the trust fund in each year, and pursuant to a budget approved by the board of trustees. The funds in trust shall be used solely to supplement emergency medical care resources within each county, including, but not limited to, those provided by any federally recognized tribes within the county, provided that, without increasing said 3 percent amount, one-half of 1 percent of the net win on which said contribution is based shall be used to establish or supplement programs within the county that address compulsive and addictive gambling.

Sec. 5.4. Local Benefits Grant Fund.

Sec. 5.4.1. The Tribe shall establish a trust fund into which it shall deposit, on a quarterly basis on each contribution date, an amount equal to 1 percent of the net win from Tribal gaming terminals in the Tribe's gaming operation.

Sec. 5.4.2. Within 60 days after commencing operations under this Gaming Compact, the Tribe shall invite discussion, on a government-to-government basis, with governmental representatives of any city or county within the boundaries of which the Tribe's gaming facilities are located. Those discussions shall address community needs that could be met by grants of funds from the trust to any such cities and counties. Any federally recognized tribes within the county that are also providing services to meet those community needs shall also be included in those discussions and shall be eligible for those grants. The procedure and criteria for receiving such funds shall be submitted in writing to, and approved by, a committee comprised of representatives of each of the eligible local community and tribal governments and the Tribe. The Tribe shall distribute annually all of such trust funds, less reasonable administrative costs of no more than 5 percent, in accordance with a distribution plan agreed upon by the committee that is fair and equitable. Funds not distributed in any year despite good faith efforts to do so shall be carried over to the following year.

Sec. 6.0. REGULATION OF GAMING

Sec. 6.1. Tribal Gaming Ordinance. All gaming activities conducted under this Gaming Compact shall at a minimum comply with a Tribal gaming ordinance duly adopted by the Tribe and approved in accordance with IGRA.

Sec. 6.2. Tribal Ownership, Management, and Control of Gaming Facility and Gaming Operation. All gaming operations and facilities authorized under this Gaming Compact shall be owned solely by the Tribe. The parties acknowledge that most tribal gaming operations and facilities within the State presently are controlled and conducted solely by a tribe, and that a goal of the Act is to enable all tribes to control and conduct their own gaming operations and facilities, provide tribal job training and employment, and achieve tribal self-sufficiency. Therefore, although the Tribe shall be entitled to contract for the management of the gaming facility and operation in accordance with IGRA, any such management contract shall provide that, to the extent permitted by law, members of the Tribe will be trained for and advanced to key management positions, and that a goal of the management contractor is to prepare the Tribe to assume the control and conduct of the operation and facility.

Sec. 6.3. Prohibition Regarding Minors. Tribal gaming facilities operated pursuant to this Gaming Compact shall be subject to the same minimum-age restrictions for patrons that currently apply to the California State Lottery. If alcoholic beverages are served in any area of a Tribal gaming facility operated pursuant to this Gaming Compact, prohibitions regarding age limits in that area shall be governed by applicable law.

Sec. 6.4. Licensing Requirements and Procedures.

Sec. 6.4.1. Summary of Licensing Principles. All persons in any way connected with the gaming operation or facility who are required to be licensed under IGRA and any others required to be licensed under this Gaming Compact, including, but not limited to, all gaming employees and gaming resource suppliers, must be licensed by the Tribal gaming agency. The Tribal gaming agency shall have the primary responsibility for licensing those persons and entities and for the regulation of the gaming operation and facility. The Tribal gaming agency shall also certify, through the use of experts and with participation by the State gaming agency if it so desires, that the gaming facility and any construction to be undertaken in regard thereto meet specified building and safety standards. The State gaming agency shall be provided with licensing application information and reports regarding facility inspections and compliance. The State gaming agency may review that information and object or refrain from objecting thereto. In the event that the State gaming agency fails to object to a gaming license application within 90 days after receipt of that information and notification that the Tribal gaming agency intends to issue a temporary or permanent license, the State gaming agency is deemed to have certified that it has no objection to that issuance, but the State gaming agency shall be free at any time to revoke that certification, or to request the Tribal gaming agency to suspend or revoke a gaming license. The dispute resolution processes between the State and the Tribe provided for herein shall be available to resolve disputes between the Tribe and the State regarding such requests and building and safety certifications. The parties intend that the licensing process provided for in this Gaming Compact shall involve joint cooperation between the Tribal gaming agency and the State gaming agency, as more particularly described herein.

Sec. 6.4.2. Gaming Facility. (a) The gaming facility authorized by this Gaming Compact shall be licensed by the Tribal gaming agency in conformity with the requirements of this Gaming Compact, the Tribal gaming ordinance, and IGRA. The license shall be reviewed and renewed, if appropriate, every two years thereafter. Verification that this requirement has been met shall be provided to the State gaming agency. The Tribal gaming agency's certification to that effect shall be posted in a conspicuous and public place in the gaming facility at all times.

(b) In order to protect the health and safety of all gaming facility patrons, guests, and employees, all gaming facilities of the Tribe constructed after the effective date of this Gaming Compact shall meet the building and safety codes of the Tribe, which, as a condition for engaging in that construction, shall amend its existing building and safety codes if necessary, or enact such codes if there are none, so that they meet the standards of either the building and safety codes of any county within the boundaries of which the site of the facility is located, or the Uniform Building Codes, including all uniform fire, plumbing, electrical, mechanical, and related codes then in effect, provided that nothing herein shall be deemed to confer jurisdiction upon any county or the State with respect to any reference to such building and safety codes.

(c) Any gaming facility in which gaming authorized by this Gaming Compact is conducted shall be licensed by the Tribal gaming agency prior to occupancy if it was not used for any gaming activities under IGRA prior to the effective date of this Gaming Compact, or, if it was so used, within one year thereafter. The issuance of this license shall be reviewed and renewed every two years thereafter. Inspections by qualified building and safety experts shall be conducted under the direction of the Tribal gaming agency as the basis for issuing or renewing any license hereunder. The Tribal gaming agency shall determine and certify that, as to new construction or new use for gaming, the facility meets the Tribe's building and safety code, or, as to facilities or portions of facilities that were used for the Tribe's gaming activities prior to this Gaming Compact, that the facility or portions thereof do not endanger the health or safety of occupants or the integrity of the gaming operation.

(d) The State gaming agency shall be given at least 30 days' notice of each inspection by those experts, and, after 10 days' notice to the Tribe, may accompany any such inspection. The Tribe agrees to correct any facility condition noted in an inspection that does not meet the standards set forth in subdivision (b). The Tribal gaming agency and State gaming agency shall exchange any reports of an inspection within 10 days after its completion, which reports shall also be separately and simultaneously forwarded by both agencies to the Tribal Chairperson. Upon certification by those experts that a facility meets applicable standards, the Tribal gaming agency shall forward the experts' certification to the State within 10 days of issuance. If the State objects to that certification, the Tribe shall make a good faith effort to address the State's concerns, but if the State does not withdraw its objection, the matter will be resolved in accordance with the dispute resolution provisions of Section 9.0.

Sec. 6.4.3. Suitability Standard Regarding Gaming Licenses. In reviewing an application for a gaming license, and in addition to any standards set forth in the Tribal gaming ordinance, the Tribal gaming agency shall consider whether issuance of the license is inimical to public health, safety, or welfare, and whether issuance of the license will undermine public trust that the Tribe's gaming operations, or tribal government gaming generally, are free from criminal and dishonest elements and would be conducted honestly. A license may not be issued unless, based on all information and documents submitted, the Tribal gaming agency is satisfied that the applicant is all of the following, in addition to any other criteria in IGRA or the Tribal gaming ordinance:

(a) A person of good character, honesty, and integrity.

(b) A person whose prior activities, criminal record, if any, reputation, habits, and associations do not pose a threat to the public interest or to the effective regulation and control of gambling, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the conduct of gambling or in the carrying on of the business and financial arrangements incidental thereto.

(c) A person who is in all other respects qualified to be licensed as provided in this Gaming Compact, IGRA, the Tribal gaming ordinance, and any other criteria adopted by the Tribal gaming agency or the Tribe, provided that any applicant who supplied services or equipment to a tribal gaming operation prior to the effective date of this Act, such as, but not limited to, a person who would be deemed to be a gaming employee or gaming resource supplier under this Gaming Compact, or any person who may have been deemed to have violated a law in the exercise of or protection of a tribe's sovereignty rights in connection

with fishing, hunting, protection of burial grounds, repatriation of remains or artifacts, or gaming, may not, for that reason, be deemed unsuitable. Nothing herein may be deemed to exempt any such applicant from otherwise qualifying for licensing or certification under this Gaming Compact.

Sec. 6.4.4. Gaming Employees. Every gaming employee shall obtain, and thereafter maintain, a valid Tribal gaming license, which shall be subject to biannual renewal, provided that in accordance with Section 6.4.9, those persons may be employed on a temporary or conditional basis pending completion of the licensing process.

Sec. 6.4.5. Gaming Resource Supplier. Any gaming resource supplier who provides, has provided, or is deemed likely to provide at least twenty-five thousand dollars ($25,000) in gaming resources in any 12-month period shall be licensed by the Tribal gaming agency prior to the sale, lease, or distribution, or further sale, lease, or distribution, of any such gaming resources to or in connection with the Tribe's operation or facility. These licenses shall be renewed at least every two years.

Sec. 6.4.6. Financial Sources. Any party extending financing, directly or indirectly, to the Tribe's gaming facility or gaming operation shall be licensed by the Tribal gaming agency prior to extending that financing. Licensing shall be effective for no more than two years before a renewal must be obtained, provided that, if a lender's gaming license is revoked or not renewed, reasonable arrangements may be made with regard to payment of any balance due to that lender so as to not impose undue hardship on the Tribe, provided that reasonable attempts shall be made to avoid ongoing conflicts with any licensing standard herein. A gaming resource supplier who provides financing in connection with the sale or lease of gaming resources obtained from that supplier may be licensed solely in accordance with licensing procedures applicable, if at all, to gaming resource suppliers. The Tribal gaming agency may, at its discretion, exclude, from the licensing requirements of this section, financing provided by a federally regulated or state-regulated bank, savings and loan, or other lending institution, a federally recognized tribal government or tribal entity thereof, or any agency of the federal, state, or local government.

Sec. 6.4.7. Processing Tribal Gaming License Applications. Each applicant for a Tribal gaming license shall submit the completed application along with the required information and an application fee, if required, to the Tribal gaming agency in accordance with the rules and regulations of that agency. At a minimum, the Tribal gaming agency shall require submission and consideration of all information required under IGRA, including Section 556.4 of Title 25 of the Code of Federal Regulations, for licensing primary management officials and key employees. For applicants who are business entities, these licensing provisions shall apply to the entity as well as: (i) each of its officers and directors; (ii) each of its principal management employees, including any chief executive officer, chief financial officer, chief operating officer, or general manager; (iii) each of its owners or partners, if an unincorporated business; (iv) each of its shareholders who owns more than 10 percent of the shares of the corporation, if a corporation; and (v) each person or entity (other than a financial institution that the Tribal gaming agency has determined does not require a license under the preceding section) that has provided financing in connection with any gaming authorized under this Gaming Compact, if that person or entity provided more than 10 percent of (a) the start-up capital, (b) the operating capital over a 12-month period, or (c) a combination thereof. For purposes of this section,

where there is any commonality of the characteristics identified in clauses (i) to (iv), inclusive, between any two or more entities, those entities may be deemed to be a single entity. Nothing herein precludes the Tribe or Tribal gaming agency from requiring more stringent licensing requirements.

Sec. 6.4.8. Background Investigations of Applicants. The Tribal gaming agency shall conduct or cause to be conducted all necessary background investigations reasonably required to determine that the applicant is qualified for a gaming license under the standards set forth in Section 6.4.3, and to fulfill all requirements for licensing under IGRA, the Tribal gaming ordinance, and this Gaming Compact. The Tribal gaming agency may not issue a license until a determination is made that those qualifications have been met. In lieu of completing its own background investigation, and to the extent that doing so does not conflict with or violate IGRA and the Tribal gaming ordinance, the Tribal gaming agency may rely on a State certification of nonobjection previously issued under a Gaming Compact involving another tribe, or a State gaming license previously issued to the applicant, to fulfill some or all of the Tribal gaming agency's background investigation obligation. An applicant for a Tribal gaming license shall be required to provide releases to the State gaming agency to make available to the Tribal gaming agency background information regarding the applicant. The State gaming agency shall cooperate in furnishing to the Tribal gaming agency that information, unless doing so would violate any agreement the State gaming agency has with a source of the information other than the applicant, or would impair or impede a criminal investigation, or unless the Tribal gaming agency cannot provide sufficient safeguards to assure the State gaming agency that the information will remain confidential.

Sec. 6.4.9. Temporary Licensing. Notwithstanding anything herein to the contrary, if the applicant has completed a license application in a manner satisfactory to the Tribal gaming agency, and that agency has conducted a preliminary background investigation, and the investigation or other information held by that agency does not indicate that the applicant has a criminal history or other information in his or her background that would either automatically disqualify the applicant from obtaining a license or cause a reasonable person to investigate further before issuing a license, or is otherwise unsuitable for licensing, the Tribal gaming agency may issue a temporary license and may impose such specific conditions thereon pending completion of the applicant's background investigation as the Tribal gaming agency in its sole discretion shall determine. Special fees may be required by the Tribal gaming agency to issue or maintain a temporary license. A temporary license shall remain in effect until suspended or revoked, or a final determination is made on the application. At any time after issuance of a temporary license, the Tribal gaming agency may suspend or revoke it in accordance with Sections 6.5.1 and 6.5.5, and the State gaming agency may request suspension or revocation in accordance with subdivision (d) of Section 6.5.6.

Sec. 6.5. Gaming License Issuance. Upon completion of the necessary background investigation (including any reliance in whole or in part on a State certification of nonobjection, or a State gaming license under Section 6.4.8), receipt and review of such further information as the Tribal gaming agency may require, and as to applicants who are not Tribal members, actual or constructive receipt by the Tribal gaming agency of a certificate of nonobjection by the State gaming agency, and payment of all necessary fees by the applicant, the Tribal gaming agency may issue a license on a conditional or unconditional

basis. Nothing herein shall create a property or other right of an applicant in an opportunity to be licensed, or in a license itself, both of which shall be considered to be privileges granted to the applicant in the sole discretion of the Tribal gaming agency.

Sec. 6.5.1. Denial, Suspension, or Revocation of Licenses. Any application for a gaming license may be denied, and any license issued may be revoked, if the Tribal gaming agency determines that the application is incomplete or deficient, the applicant is determined to be unsuitable or otherwise unqualified for a gaming license, or the State objects to the issuance of that license pursuant to subdivision (c) of Section 6.5.6. Pending consideration of revocation, the Tribal gaming agency may suspend a license in accordance with Section 6.5.5. All rights to notice and hearing shall be governed by Tribal law, as to which the applicant will be notified in writing along with notice of an intent to suspend or revoke the license.

Sec. 6.5.2. Renewal of Licenses; Extensions; Further Investigation. In the event a licensee has applied for renewal prior to expiration of a license and the Tribal gaming agency has, through no fault of the applicant, been unable to complete the renewal process prior to that expiration, the license shall be deemed to be automatically extended until formal action has been taken on the renewal application or a suspension or revocation has occurred. Applicants for renewal of a license shall provide updated material as requested, on the appropriate renewal forms, but, at the discretion of the Tribal gaming agency, may not be required to resubmit historical data previously submitted or that is otherwise available to the Tribal gaming agency. At the discretion of the Tribal gaming agency, an additional background investigation may be required at any time if the Tribal gaming agency determines the need for further information concerning the applicant's continuing suitability or eligibility for a license.

Sec. 6.5.3. Identification Cards. The Tribal gaming agency shall require that all persons who are required to be licensed shall wear, in plain view at all times while in the gaming facility, identification badges issued by the Tribal gaming agency. Identification badges must include information including, but not limited to, a photograph and an identification number, which is sufficient to enable agents of the Tribal gaming agency to readily identify the employees and determine the validity and date of expiration of their license.

Sec. 6.5.4. Fees for Tribal License. The fees for all tribal licenses shall be set by the Tribal gaming agency.

Sec. 6.5.5. Suspension of Tribal License. The Tribal gaming agency may summarily suspend the license of any employee if the Tribal gaming agency determines that the continued licensing of the person or entity could constitute a threat to the public health or safety or may be in violation of the Tribe's licensing standards. Any right to notice or hearing in regard thereto shall be governed by Tribal law.

Sec. 6.5.6. State Certification Process. (a) Except for enrolled members of a federally recognized California tribe, who shall be licensed exclusively by the Tribe, upon receipt of a completed license application and a determination by the Tribal gaming agency that it intends to issue the earlier of a temporary or permanent license, the Tribal gaming agency shall transmit to the State gaming agency a copy of all Tribal license application materials together with a set of fingerprint cards, a current photograph, and such releases of information, waivers, and other completed and executed forms as have been obtained by the Tribal gaming agency, unless the State gaming agency waives some or all

of those submissions, together with a notice of intent to license that applicant. Additional information may be required by the State gaming agency to assist it in its background investigation, provided that such State gaming agency requirement shall be no greater than that which is typically required of applicants for a State gaming license in connection with nontribal gaming activities and at a similar level of participation or employment. The State gaming agency and the Tribal gaming agency (together with Tribal gaming agencies under other Gaming Compacts) shall cooperate in developing standard licensing forms for Tribal gaming license applicants, on a statewide basis, that reduce or eliminate duplicative or excessive paperwork, which forms and procedures shall take into account the Tribe's requirements under IGRA and the expense thereof.

(b) Temporary License Objection. The State gaming agency shall notify the Tribal gaming agency as promptly as possible if it has an objection to the issuance of a temporary license, but the Tribal gaming agency may not be required to await objection or nonobjection by the State gaming agency in issuing a temporary license. Any objection shall be made in good faith, and shall be given prompt and thorough consideration in good faith by the Tribal gaming agency. Nothing herein prevents the State gaming agency from at any time requesting suspension or revocation of a temporary license pursuant to subdivision (d) of Section 6.5.6. Any dispute over the issuance of a temporary license shall be resolved in accordance with the procedures set forth in Section 9.0.

(c) Background Investigations of Applicants. Upon receipt of completed license application information from the Tribal gaming agency, the State gaming agency may conduct a background investigation to determine whether the applicant is suitable to be licensed in accordance with the standards set forth in Section 6.4.3. The State gaming agency and Tribal gaming agency shall cooperate in sharing as much background information as possible, both to maximize investigative efficiency and thoroughness and to minimize investigative costs. Upon completion of the necessary background investigation or other verification of suitability, the State gaming agency shall issue a notice to the Tribal gaming agency certifying that the State has no objection to the issuance of a license to the applicant by the Tribal gaming agency ("certification of nonobjection"), or that it objects to that issuance. If notice of objection is given, a statement setting forth the grounds for the objection shall be forwarded to the Tribal gaming agency together with the information upon which the objection was based, unless doing so would violate a confidentiality agreement or compromise a pending criminal investigation. If a notice of objection or a certificate of nonobjection is not received by the Tribal gaming agency within 90 days of the first receipt by the State gaming agency of the application information and intent to issue a temporary or permanent license, as provided herein, the State gaming agency shall be deemed to have issued a certificate of nonobjection.

(d) Grounds for Requesting Tribal License Revocation or Suspension or Denying State Certification of Nonobjection. The State gaming agency may revoke a State certification of nonobjection if it determines at any time that the applicant or license holder does not meet the standards for suitability set forth in Section 6.4.3. Upon the Tribal gaming agency's receipt of notice of that action, it shall immediately and in good faith consider the action of the State gaming agency and, if the circumstances warrant it, take action to suspend or revoke the licensee's Tribal license, unless within seven days of receipt of that notice it has notified the State gaming agency that good cause exists to defer taking

that action, including the need for further investigation. Disputes regarding the action taken or not taken in response to the State gaming agency request shall be resolved pursuant to Section 9.0. If at any time the State gaming agency becomes aware of information that would constitute good cause to deny or revoke the Tribal license of any person, including members of federally recognized Indian tribes in California who are exempt from the State review process, it shall convey that information to the Tribal gaming agency promptly after being made aware of that information, and may request that appropriate action be taken by the Tribal gaming agency as to that person.

Sec. 6.5. Licenses Required. A person may not be employed by, or act as a gaming resource supplier to, any gaming activity or facility of the Tribe unless that person, if required to be licensed, has obtained all licenses required hereunder.

Sec. 7.0. TRIBAL ENFORCEMENT OF GAMING COMPACT PROVISIONS

Sec. 7.1. On-Site Regulation. It is the responsibility of the Tribal gaming agency to conduct on-site gaming regulation and control in order to enforce the terms of this Gaming Compact, IGRA, and the Tribal gaming ordinance with respect to gaming operation and facility compliance, and to protect the integrity of the gaming activities, the reputation of the Tribe and the gaming operation for honesty and fairness, and the confidence of patrons that tribal government gaming in California meets the highest standards of regulation and internal controls. To meet those responsibilities, the Tribal gaming agency shall adopt regulations, procedures, and practices as set forth herein.

Sec. 7.2. Investigation and Sanctions. The Tribal gaming agency shall investigate any reported violation of this Gaming Compact and shall require the gaming operation to correct the violation upon such terms and conditions as the Tribal gaming agency determines are necessary. The Tribal gaming agency shall be empowered by the Tribal ordinance to impose fines or other sanctions within the jurisdiction of the Tribe against gaming licensees or other persons who interfere with or violate the Tribe's gaming regulatory requirements and obligations under IGRA, the Tribal gaming ordinance, or this Gaming Compact. The Tribal gaming agency shall report continued violations or failures to comply with its orders to the State gaming agency, provided that the continued violations and compliance failures have first been reported to the Tribe and no corrective action has been taken within a reasonable period of time.

Sec. 7.3. Assistance by State Gaming Agency. If requested by the Tribal gaming agency, the State gaming agency shall assist in any investigation initiated by the Tribal gaming agency and provide other requested services to ensure proper compliance with this Gaming Compact. The State shall be reimbursed for its reasonable costs of that assistance provided that it has received approval from the Tribe in advance for those expenditures.

Sec. 7.4. Access to Premises by State Gaming Agency; Notification; Inspections. Notwithstanding that the Tribe has the primary responsibility to administer and enforce the regulatory requirements, the State gaming agency shall have the right to inspect the Tribe's gaming facilities with respect to class III gaming activities only, and all gaming operation or facility records relating thereto, subject to the following conditions:

Sec. 7.4.1. Inspection of public areas of a gaming facility may be made at any time without prior notice during normal gaming facility business hours.

Sec. 7.4.2. Inspection of private areas of a gaming facility not accessible to the public may be made at any time during normal gaming facility business

hours, immediately after the State gaming agency's authorized inspector notifies the Tribal gaming agency and gaming facility management of his or her presence on the premises, presents proper identification, and requests access to the nonpublic areas of the gaming facility. The Tribal gaming agency, in its sole discretion, may require an employee of the gaming facility or the Tribal gaming agency to accompany the State gaming agency inspector at all times that the State gaming agency inspector is on the premises of a gaming facility. If the Tribal gaming agency imposes such a requirement, it shall require such an employee of the gaming facility or the Tribal gaming agency to be available at all times for those purposes.

Sec. 7.4.3. Inspection and copying of gaming operation records may occur at any time, immediately after notice to the Tribal gaming agency, during the normal hours of the facility's business office, provided that the inspection and copying of those records may not interfere with the normal functioning of the gaming operation or facility. Notwithstanding any other provision of the law of this State, all information and records, and copies thereof, that the State gaming agency obtains, inspects, or copies pursuant to this Gaming Compact shall be and remain the property solely of the Tribe, and may not be released or divulged for any purpose without the Tribe's prior written consent, except that the production of those records may be compelled by subpoena in a criminal prosecution or in a proceeding for violation of this Gaming Compact without the Tribe's prior written consent, and provided further that, prior to the disclosure of the contents of any such records, the Tribe shall be given at least 10 court days' notice and an opportunity to object or to require the redaction of trade secrets or other confidential information that is not relevant to the proceeding in which the records are to be produced.

Sec. 7.4.4. Whenever a representative of the State gaming agency enters the premises of the gaming facility for any such inspection, that representative shall immediately identify himself or herself to security or supervisory personnel of the gaming facility.

Sec. 7.4.5. Any person associated with the State gaming agency who is expected to have access to nonpublic areas of the gaming facility shall first be identified to the Tribal gaming agency as so authorized, and following a sufficient period of time for the Tribal gaming agency to conduct a reasonable inquiry into the person's character and background, and to grant approval to that person's presence, which approval may not be unreasonably withheld.

Sec. 8.0. RULES AND REGULATIONS FOR THE OPERATION AND MANAGEMENT OF THE TRIBAL GAMING OPERATION

Sec. 8.1. Adoption of Regulations for Operation and Management; Minimum Standards. In order to meet the goals set forth in this Gaming Compact and required of the Tribe by law, the Tribal gaming agency shall be vested with the authority to promulgate, at a minimum, rules and regulations governing the following subjects, and to ensure their enforcement in an effective manner:

Sec. 8.1.1. The enforcement of all relevant laws and rules with respect to the gaming operation and facility, and the power to conduct investigations and hearings with respect thereto and to any other subject within its jurisdiction.

Sec. 8.1.2. The physical safety of gaming operation patrons, employees, and any other person while in the gaming facility.

Sec. 8.1.3. The physical safeguarding of assets transported to, within, and from the gaming facility.

Sec. 8.1.4. The prevention of illegal activity from occurring within the facility or with regard to the gaming operation, including, but not limited to, the maintenance of employee procedures and a surveillance system as provided below.

Sec. 8.1.5. The detention of persons who may be involved in illegal acts for the purpose of notifying appropriate law enforcement authorities.

Sec. 8.1.6. The recording of any and all occurrences within the gaming facility that deviate from normal operating policies and procedures (hereafter "incidents"). The procedure for recording incidents shall (1) specify that security personnel record all incidents, regardless of an employee's determination that the incident may be immaterial (all incidents shall be identified in writing); (2) require the assignment of a sequential number to each report; (3) provide for permanent reporting in indelible ink in a bound notebook from which pages cannot be removed and in which entries are made on each side of each page; and (4) require that each report include, at a minimum, all of the following:

(a) The record number.

(b) The date.

(c) The time.

(d) The location of the incident.

(e) A detailed description of the incident.

(f) The persons involved in the incident.

(g) The security department employee assigned to the incident.

Sec. 8.1.7. The establishment of employee procedures designed to permit detection of any irregularities, theft, cheating, fraud, or the like.

Sec. 8.1.8. Maintenance of a list of persons barred from the gaming facility who, because of their past behavior, criminal history, or association with persons or organizations, pose a threat to the integrity of the gaming activities of the Tribe or to the integrity of regulated gaming within the State.

Sec. 8.1.9. The conduct of an audit of the gaming operation, not less than annually, by an independent certified public accountant, in accordance with the auditing and accounting standards for audits of casinos of the American Institute of Certified Public Accountants.

Sec. 8.1.10. Submission to and prior approval from the Tribal gaming agency of the rules and regulations of each class III game to be operated by the Tribe, and of any changes in those rules and regulations. No class III game may be played that has not received Tribal gaming agency approval.

Sec. 8.1.11. Maintenance of a copy of the rules, regulations, and procedures for each game as presently played, including, but not limited to, the method of play and the odds and method of determining amounts paid to winners. Information regarding the method of play, odds, payoff determinations, and player pool balances shall be visibly displayed or available to patrons in written form in the gaming facility. Betting limits applicable to any gaming station shall be displayed at that gaming station. In the event of a patron dispute over the application of any gaming rule or regulation, the matter shall be handled in accordance with the Tribal gaming ordinance and any rules and regulations promulgated by the Tribal gaming agency.

Sec. 8.1.12. Maintenance of a closed-circuit television surveillance system consistent with industry standards for gaming facilities of the type and scale operated by the Tribe, which system shall be approved by, and may not be modified without the approval of, the Tribal gaming agency. The Tribal gaming agency shall have current copies of the gaming facility floor plan and closed-

circuit television system at all times, and any modifications thereof first shall be approved by the Tribal gaming agency.

Sec. 8.1.13. Maintenance of a cashier's cage in accordance with industry standards for such facilities.

Sec. 8.1.14. A description of minimum staff and supervisory requirements for each gaming activity to be conducted.

Sec. 8.1.15. Regulations specific to technical standards for the operation of Tribal gaming terminals and other games authorized herein to be adopted by the Tribe, which technical specifications may be no less stringent than those approved by a recognized gaming testing laboratory in the gaming industry.

Sec. 8.2. Criminal Jurisdiction. Nothing in this Gaming Compact affects the criminal jurisdiction of the State under Public Law 280 (18 U.S.C. Sec. 1162) or IGRA, to the extent applicable, provided that no gaming activity conducted in compliance with this Gaming Compact and the Act may be deemed to be a civil or criminal violation of any law of the State. Except as otherwise provided herein, to the extent the State contends that a violation of this Gaming Compact or any law of the State regarding the regulation or conduct of gambling has occurred at or in relation to the Tribe's gaming operation or facility, the violation shall be treated solely as a civil matter to be resolved pursuant to Section 9.0.

Sec. 9.0. DISPUTE RESOLUTION PROVISIONS

Sec. 9.1. Voluntary Resolution; Reference to Other Means of Resolution. In recognition of the government-to-government relationship of the Tribe and the State, the parties shall make their best efforts to resolve disputes that occur under this Gaming Compact by good faith negotiations whenever possible. Therefore, without prejudice to the right of either party to seek injunctive relief against the other when circumstances require that immediate relief, the parties hereby establish a threshold requirement that disputes between the Tribe and the State first be subjected to a process of meeting and conferring in order to foster a spirit of cooperation and efficiency in the administration and monitoring of performance and compliance by each other with the terms, provisions, and conditions of this Gaming Compact, as follows:

(a) Either party shall give the other, as soon as possible after the event giving rise to the concern, a written notice setting forth the issues to be resolved.

(b) The parties shall meet and confer in a good faith attempt to resolve the dispute through negotiation not later than 10 days after receipt of the notice, unless both parties agree in writing to an extension of time.

(c) If the dispute is not resolved to the satisfaction of the parties within 20 days after the first meeting, then a party may seek to have the dispute resolved by an arbitrator in accordance with this section. "Dispute," for purposes of this subdivision, means any disagreement between the State gaming agency and the Tribal gaming agency in reference to the provisions of Sections 4.0 to 8.1.15, inclusive.

(d) Disagreements other than disputes as defined in subdivision (c) shall be resolved in federal district court and all applicable courts of appeal (or, if those federal courts lack jurisdiction, in any court of competent jurisdiction and its related courts of appeal). The disputes to be submitted to court action include, but are not limited to, any other dispute, including, but not limited to, claims of breach or failure to negotiate in good faith. In no event may the Tribe be precluded from pursuing any arbitration or judicial remedy against the State on the grounds that the Tribe has failed to exhaust its state administrative remedies.

Sec. 9.2. Arbitration Rules. Arbitration shall be conducted in accordance with the policies and procedures of the Commercial Arbitration Rules of the American Arbitration Association, and shall be held on the Tribe's reservation. Each side shall bear its own costs, attorneys' fees, and one-half the cost of the arbitration. Only one arbitrator may be named, unless the Tribe and the State agree otherwise. The decision of the arbitrator shall be binding.

Sec. 9.3. No Waiver or Preclusion of Other Means of Dispute Resolution. This section may not be construed to waive, limit, or restrict any remedy that is otherwise available to either party, nor may this section be construed to preclude, limit, or restrict the ability of the parties to pursue, by mutual agreement, any other method of dispute resolution, including, but not limited to, mediation or utilization of a technical advisor to the Tribal and State gaming agencies, provided that neither party is under any obligation to agree to such alternative method of dispute resolution.

Sec. 9.4. Limited Waiver of Sovereign Immunity. (a) In the event that a dispute is to be resolved in federal court or a court of competent jurisdiction as provided in Section 9.1, the State and the Tribe expressly consent to be sued therein and waive any immunity therefrom that they may have, provided that:

(1) The dispute is limited solely to issues arising under this Gaming Compact;

(2) Neither side makes any claim for monetary damages (that is, only injunctive, specific performance, or declaratory relief is sought); and

(3) No person or entity other than the Tribe and the State are parties to the action.

(b) In the event of intervention by any additional party into any such action without the consent of the Tribe and the State, the waivers of both the Tribe and State provided for herein shall be deemed to be revoked and void.

(c) The waivers and consents provided for under this Section 9.0 shall extend to any actions to compel arbitration, any arbitration proceeding herein, any action to confirm or enforce any arbitration award as provided herein, and any appellate proceedings emanating from a matter in which an immunity waiver has been granted. Except as stated herein, no other waivers or consents to be sued, either express or implied, are granted by either party.

Sec. 10.0. PUBLIC HEALTH, SAFETY, AND LIABILITY

Sec. 10.1. Compliance. For the purposes of this Gaming Compact, the Tribal gaming operation shall comply with and enforce standards no less stringent than the following with respect to public health and safety:

(a) Public health standards for food and beverage handling in accordance with United States Public Health Service requirements.

(b) Federal water quality and safe drinking water standards.

(c) The building and safety standards set forth in Section 6.4.

(d) A requirement that the Tribe carry no less than two million dollars ($2,000,000) in public liability insurance for patron claims, and that the Tribe provide reasonable assurance that those claims will be promptly and fairly adjudicated, and that legitimate claims will be paid, provided that nothing herein requires the Tribe to agree to liability for punitive damages or attorneys' fees.

(e) Tribal codes and other applicable federal law regarding public health and safety.

(f) The creation and maintenance of a system that provides redress for employee work-related injuries, disabilities, and unemployment through requiring insurance or self-insurance, or by other means, which system includes

the right to notice, hearings, and a means of enforcement and provides benefits comparable to those mandated for comparable workplaces under State law.

Sec. 10.2. Emergency Service Accessibility. The Tribal gaming operation shall ensure that it has made reasonable provisions for adequate emergency fire, medical, and related relief and disaster services for patrons and employees of the facility.

Sec. 10.3. Alcoholic Beverage Service. Standards for alcohol service shall be subject to applicable law.

Sec. 11.0. AMENDMENTS, DURATION, AND EFFECTIVE DATE

Sec. 11.1. Effective Date. This Gaming Compact shall constitute the agreement between the State and the Tribe pursuant to IGRA and may be amended and modified only under the provisions set forth herein. This Gaming Compact shall take effect upon publication of notice of approval by the United States Secretary of the Interior in the Federal Register in accordance with applicable federal law (25 U.S.C. Sec. 2710(d)(3)(B)).

Sec. 11.2. Voluntary Termination. Once effective, this Gaming Compact shall be in effect until terminated either by the written agreement of both parties or by the Tribe unilaterally upon 60 days' written notice to the Governor.

Sec. 12.0. AMENDMENTS; RENEGOTIATIONS

Sec. 12.1. The terms and conditions of this Gaming Compact may be amended at any time by the mutual and written agreement of both parties, and such amendment is approved hereby as part of the Act.

Sec. 12.2. In the event that federal or State law is changed or is interpreted, by enactment, a final court decision, a practice of the State gaming agency, or the inclusion of such gaming in a tribal-state compact, to permit gaming in California that is not now permitted to any person or entity for any purpose, or, if permitted, is being lawfully offered for the first time, this Gaming Compact shall be automatically amended to include that permitted or offered gaming, which shall be deemed to be included within the definition of "gaming activities" hereunder.

Sec. 12.3. This Gaming Compact is subject to renegotiation in the event the Tribe wishes to engage in forms of class III gaming other than those games authorized or automatically included herein and requests renegotiation for that purpose, provided that, except for a change in law or a court ruling that establishes the right of the Tribe to engage in other forms of gaming, no such renegotiation may be sought for 12 months following the effective date of this Gaming Compact.

Sec. 12.4. Process and Negotiation Standards. All requests to amend or renegotiate shall be in writing, addressed to the State gaming agency, and shall include the activities or circumstances to be negotiated together with a statement of the basis supporting the request. If the request meets the requirements of this section, the parties shall confer promptly and determine a schedule for commencing negotiations within 30 days of the request. Unless expressly provided otherwise herein, all matters involving negotiations or other amendatory processes under this section shall be governed, controlled, and conducted (a) in conformity with the provisions and requirements of IGRA, including those provisions regarding the obligation of the State to negotiate in good faith and the enforcement of that obligation in federal court, as to which obligation and actions in federal court the State hereby agrees and consents to be sued in that court system, and (b) in conformity with the authority of the Secretary of the Interior to adopt procedures for the Tribe's engagement in

class III gaming if no agreement in a Gaming Compact can be reached and the State has failed to negotiate in good faith. The Chairperson of the Tribe and the Governor of the State are hereby authorized to designate the person or agency responsible for conducting the negotiations, and shall execute any documents necessary as a result thereof.

Sec. 13.0. NOTICES. Unless otherwise indicated by this Gaming Compact, all notices required or authorized to be served shall be served by first-class mail at the following addresses:

Governor
State of California
State Capitol
Sacramento, California

Tribal Chairperson
[Formal Name of Tribe]

Sec. 14.0. SEVERABILITY. In the event that any section or provision of this Gaming Compact is held invalid, or its application to any particular activity is held invalid, it is the intent of the parties that the remaining sections of this Gaming Compact continue in full force and effect, provided that, in the event provisions must be added to this Gaming Compact in order to preserve the intentions of the parties in light of that invalidity, the parties shall promptly negotiate those provisions in good faith.

Sec. 15.0. CHANGES IN IGRA. This Gaming Compact is intended to meet the requirements of IGRA or any successor statute, as in effect on the date this Gaming Compact becomes effective. Subsequent changes to IGRA that diminish the rights of the State or the Tribe may not be applied retroactively to this Gaming Compact, except to the extent that federal law validly mandates that diminishment without the State's or the Tribe's respective consent.

Sec. 16.0. MISCELLANEOUS

Sec. 16.1. The parties agree that, in order to further the intent of the parties and the goals of the Act, and to implement this Gaming Compact in a manner consistent therewith, this Gaming Compact shall be amended by mutual consent, arrived at as the result of good faith negotiations, if necessary to clarify or effectuate the goals and intent of this Gaming Compact and the Act, to the extent that the goals and intent are not addressed, or are ambiguously or incompletely provided for herein, provided that nothing in this section may delay the effective date or implementation of this Gaming Compact.

Sec. 16.2. Any State agency or other subdivision of the State providing regulatory or other services to the Tribe pursuant to this Gaming Compact shall be entitled to reimbursement from the Tribe for the actual and reasonable cost of those services, and the Tribe shall promptly pay that reimbursement to that agency or subdivision upon receipt of itemized invoices therefor. Any disputes concerning the reasonableness of any claim for reimbursement shall be resolved in accordance with the dispute resolution procedures set forth in Section 9.0.

Sec. 16.3. This Gaming Compact sets forth the full and complete agreement of the parties and supersedes any prior agreements or understandings with respect to the subject matter hereof.

[FORMAL NAME OF TRIBE]
By _____ *DATED:* ____ *day of* ____, ____
Chairperson

THE STATE OF CALIFORNIA
By _____ *DATED:* ____ *day of* ____, ____."
Governor

98005. The Gaming Compact offered in Section 98004 shall, to the extent permitted by law, be deemed agreed to, approved, and executed by the State of California in the event a request therefor is duly made by a federally recognized Indian tribe in accordance with Section 98002 and it is not executed by the Governor within the time prescribed in this chapter, provided that, in the event this provision is deemed to be unlawful or ineffective for any reason, or if the tribe in its discretion seeks to compel execution of the Gaming Compact through court action, the State of California hereby submits to the jurisdiction of the courts of the United States in any action brought against the state by any federally recognized Indian tribe asserting any cause of action arising from the state's refusal to execute the Gaming Compact offered in Section 98004 upon a tribe's request therefor. Without limiting the foregoing, the State of California also submits to the jurisdiction of the courts of the United States in any action brought against the state by any federally recognized California Indian tribe asserting any cause of action arising from the state's refusal to enter into negotiations with that tribe for the purpose of entering into a different Tribal-State compact pursuant to IGRA or to conduct those negotiations in good faith, the state's refusal to enter into negotiations concerning the amendment of a Tribal-State compact to which the state is a party, or to negotiate in good faith concerning that amendment, or the state's violation of the terms of any Tribal-State compact to which the state is or may become a party.

98006. The gaming authorized pursuant to this chapter, including, but not limited to, the gaming authorized pursuant to the Gaming Compact set forth in Section 98004, is not subject to any prohibition in state law now or hereafter enacted. Without limiting the foregoing, and notwithstanding any other provision of law, the following forms of gaming specifically are permitted and authorized to be conducted on Indian lands by a tribe that has entered into a Tribal-State compact with the state pursuant to this chapter, IGRA, or any other law:

(a) Any card games that were operated on any Indian reservation in California on or before January 1, 1998, provided that, with respect to card games that are not within class II of IGRA (which class II games are not affected by this chapter), those card games shall pay prizes solely in accordance with a players' pool prize system in which one or more segregated pools of funds that have been collected from player wagers are irrevocably dedicated to the prospective award of prizes in those card games or other lottery games, promotions, or contests and in which the house neither has acquired nor can acquire any interest. The tribe may set and collect a fee from players on a per play, per amount wagered, or time-period basis, and may seed the pools in the form of loans or promotional expenses, provided that the seeding is not used to pay prizes previously won.

(b) Any gaming or gambling device, provided that the devices do not dispense coins or currency and are not activated by handles, and prizes therefrom are awarded solely from one or more segregated pools of funds (1) that have been collected from player wagers, (2) that are irrevocably dedicated to the prospective award of prizes in such games or in other lottery games, contests, tournaments, or prize pool promotions, and (3) in which the house neither has acquired nor can acquire any interest. The tribe may set and collect a fee from players on a per play, per amount wagered, or time-period basis, and may seed the pools in the form of loans or promotional expenses, provided that the seeding is not used to pay prizes previously won. The introduction, possession, manufacture, repair, or transportation of gaming devices that are authorized by the terms of any Tribal-State gaming compact between the State of California and any federally

recognized Indian tribe exercising jurisdiction over Indian lands in California is lawful in this state.

(c) The operation of any lottery game, including, but not limited to, drawings, raffles, match games, and instant lottery ticket games.

98007. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, that invalidity may not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

98008. The Governor is authorized and directed to execute any documents that may be necessary to implement this chapter.

98009. The provisions of the Gaming Compact set forth in Section 98004 are hereby incorporated into state law, and all gaming activities, including but not limited to gaming devices, authorized therein are expressly declared to be permitted as a matter of state law to any Indian tribe entering into the Gaming Compact in accordance with this chapter.

98010. Nothing in this chapter may be construed to limit the ability of a federally recognized Indian tribe to request that a Tribal-State compact be negotiated with the state on terms that are different from those set forth in the Gaming Compact under this chapter, or the ability of the state to engage in those negotiations and to reach agreement under IGRA. Nothing in this chapter may be construed to mean that, in offering the Gaming Compact to Indian tribes in California under Section 98004, and, except for assessments by the state as provided therein of such amounts as are necessary to defray its costs of regulating activities as provided under the Gaming Compact, (a) the state is imposing any tax, fee, charge, or other assessment upon an Indian tribe or upon any other person or entity authorized by an Indian tribe as a condition to engaging in a class III activity, or (b) the state is refusing to enter into Tribal-State compact negotiations based upon the lack of authority of the state, or of any political subdivision of the state, to impose such a tax, fee, charge, or other assessment.

98011. No amendment to the Gaming Compact as provided for therein or under this chapter requires further approval by the Legislature or the electorate.

98012. This chapter may be amended by a two-thirds vote of the Legislature, but only to further the purposes of this Act.

Number on ballot

6. **Criminal Law. Prohibition on Slaughter of Horses and Sale of Horsemeat for Human Consumption.**

[Submitted by the initiative and approved by electors November 3, 1998.]

PROPOSED LAW

PROHIBITION OF HORSE SLAUGHTER AND SALE OF HORSEMEAT FOR HUMAN CONSUMPTION ACT OF 1998

SECTION 1. TITLE

This act shall be known and may be cited as the Prohibition of Horse Slaughter and Sale of Horsemeat for Human Consumption Act of 1998.

SEC. 2. FINDINGS AND DECLARATIONS

The people of the State of California find and declare:

(a) The horse is part of California's heritage, having played a major role in California's historical growth and development. Horses contribute significantly to the enjoyment of generations of recreation enthusiasts in California.

(b) Horses are not raised for food or fiber and are taxed differently than food animals.

(c) Hundreds of thousands of California horses have been slaughtered for food in order to provide a gourmet meat to foreign markets.

(d) Horses can be stolen, or purchased without disclosure or under false pretenses, to be slaughtered or shipped for slaughter. These practices have contributed to crime and consumer fraud.

SEC. 3. PURPOSE AND INTENT

The people of the State of California hereby declare their purpose and intent in enacting this act to be as follows:

(a) To prohibit the sale of horsemeat for food for human consumption in the State of California.

(b) To prohibit the slaughter of California horses to be used for food for human consumption.

(c) To recognize horses as an important part of California's heritage that deserve protection from those who would slaughter them for food for human consumption.

SEC. 4. Section 598c is added to the Penal Code, to read:

598c. (a) Notwithstanding any other provision of law, it is unlawful for any person to possess, to import into or export from the state, or to sell, buy, give away, hold, or accept any horse with the intent of killing, or having another kill, that horse, if that person knows or should have known that any part of that horse will be used for human consumption.

(b) For purposes of this section, "horse" means any equine, including any horse, pony, burro, or mule.

(c) Violation of this section is a felony punishable by imprisonment in the state prison for 16 months, or two or three years.

(d) It is not the intent of this section to affect any commonly accepted commercial, noncommercial, recreational, or sporting activity that relates to horses.

(e) It is not the intent of this section to affect any existing law that relates to horse taxation or zoning.

SEC. 5. Section 598d is added to the Penal Code, to read:

598d. (a) Notwithstanding any other provision of law, horsemeat may not be offered for sale for human consumption. No restaurant, cafe, or other public eating place may offer horsemeat for human consumption.

(b) Violation of this section is a misdemeanor punishable by a fine of not more than one thousand dollars ($1,000), or by confinement in jail for not less than 30 days nor more than two years, or by both that fine and confinement.

(c) A second or subsequent offense under this section is punishable by imprisonment in the state prison for not less than two years nor more than five years.

SEC. 6. SEVERABILITY

If any provision of this act, or the application thereof to any person or circumstances, is held invalid or unconstitutional, that invalidity or unconstitutionality shall not affect other provisions or applications of this act that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this act are severable.

BOND ACT SUBMITTED BY LEGISLATURE

Number on ballot

1A. **Class Size Reduction Kindergarten–University Public Education Facilities Bond Act of 1998.** (Statutes 1998, Chapter 407, SB 50)

[Approved by electors November 3, 1998.]

PROPOSED LAW

SEC. 16. Part 68 (commencing with Section 100400) is added to the Education Code, to read:

PART 68. PUBLIC EDUCATION BONDS

CHAPTER 1. CLASS SIZE REDUCTION KINDERGARTEN–UNIVERSITY PUBLIC EDUCATION FACILITIES BOND ACT OF 1998

100400. This part shall be known and may be cited as the Class Size Reduction Kindergarten–University Public Education Facilities Bond Act of 1998.

100401. The incorporation of, or reference to, any provisions of California statutory law in this part includes all acts amendatory thereof and supplementary thereto.

100403. (a) Bonds in the total amount of nine billion two hundred million dollars ($9,200,000,000), not including the amount of any refunding bonds issued in accordance with Chapter 2 (commencing with Section 100410) and Chapter 3 (commencing with Section 100450), or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this part and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of the principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) Pursuant to this section, the Treasurer shall sell the bonds authorized by the State School Building Finance Committee established by Section 15909 and the Higher Education Facilities Finance Committee established pursuant to Section 67353 at any different times necessary to service expenditures required by the apportionments.

100405. For purposes of this part, "Chapter 12" means Chapter 12 (commencing with Section 17000) of Part 10 and "Chapter 12.5" means Chapter 12.5 (commencing with Section 17070.10) of Part 10.

CHAPTER 2. KINDERGARTEN THROUGH 12TH GRADE

Article 1. Kindergarten Through 12th Grade School Facilities Program Provisions

100410. (a) Three billion three hundred fifty million dollars ($3,350,000,000) of the proceeds of bonds issued and sold pursuant to this part shall be deposited in the 1998 State School Facilities Fund, which is established by Section 17070.40, and allocated by the State Allocation Board pursuant to this chapter. Before requesting the sale of bonds pursuant to Section 100432 for deposit in the State School Facilities Fund, the State Allocation Board shall request, pursuant

to Section 100432, the sale of bonds sufficient to finance all projects for which application was made pursuant to the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 12 (commencing with Section 17000) of Part 10) and for which an application was approved for construction, but funding was not available, prior to November 4, 1998.

(b) In addition to the amount specified in subdivision (a), three billion three hundred fifty million dollars ($3,350,000,000) of the bonds authorized by this chapter shall only be issued and sold pursuant to this chapter on or after July 1, 2000, and the proceeds of those bonds shall be deposited in the 1998 State School Facilities Fund and allocated by the State Allocation Board pursuant to this chapter.

100415. (a) All moneys deposited in the 1998 State School Facilities Fund pursuant to this chapter shall be available and, notwithstanding any other provision of law to the contrary, are hereby appropriated to provide aid to school districts of the state in accordance with the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 12 (commencing with Section 17000) of Part 10) and in accordance with the Leroy F. Greene School Facilities Act of 1998 (Chapter 12.5 (commencing with Section 17070.10) of Part 10), to provide aid to school districts, county superintendents of schools, and county boards of education of the state in accordance with Section 100420, to provide funds to repay any money advanced or loaned to the 1998 State School Facilities Fund under any act of the Legislature, together with interest provided for in that act, and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code.

(b) The bonds issued and sold pursuant to this chapter shall fund kindergarten and grades 1 through 12, inclusive, school constructions for a four-year period.

100420. (a) Of the proceeds from the sale of bonds, issued and sold pursuant to this chapter, as specified in subdivision (a) of Section 100410, not more than three billion three hundred fifty million dollars ($3,350,000,000) shall be allocated beginning in the 1998–99 fiscal year in accordance with the following schedule:

(1) Not less than one billion three hundred fifty million dollars ($1,350,000,000) for project funding related to the growth in enrollment of applicant school districts under Chapter 12 and Chapter 12.5 that have incurred or will incur enrollment increases.

(2) Not less than eight hundred million dollars ($800,000,000) for the reconstruction or modernization of facilities pursuant to Chapter 12 and Chapter 12.5.

(3) Not more than five hundred million dollars ($500,000,000) shall be deposited in the Public School Critical Hardship Account, which is hereby established in the 1998 State School Facilities Fund and shall be allocated by the State Allocation Board to fund critical hardships as defined in Chapter 12.5. These funds may be expended for the acquisition of portable classrooms for use in accordance with Chapter 14 (commencing with Section 17085) of Part 10.

(4) (A) Not more than seven hundred million dollars ($700,000,000) may be allocated to assist school districts with site acquisition and facilities-related costs of kindergarten and grades 1 to 3, inclusive, that are in the Class Size Reduction Program contained in Chapter 6.10 (commencing with Section 52120) of Part 28 and Chapter 19 (commencing with Section 17200) of Part 10, and to assist districts with the restoration of facilities that previously accommodated other

programs and were displaced as a result of the implementation of class size reduction. On and after July 1, 2000, if applications for the total funds available under this paragraph have not been filed with the State Allocation Board, the funds for which applications have not been received may be allocated by the board to other high priority needs as the board determines. On and after July 1, 2003, any funds not allocated are available for other high priority needs.

(B) The funds allocated in subparagraph (A) shall be allocated to the State Department of Education to provide class size reduction facilities grants necessary to implement the K–3 Class Size Reduction Program established pursuant to Chapter 6.10 (commencing with Section 52120) of Part 28 and Chapter 19 (commencing with Section 17200) of Part 10. The department shall certify to the State Allocation Board the amount of funds needed for this purpose. The board shall transfer the amount of funds needed to the department. From these funds, the department shall award eligible districts forty thousand dollars ($40,000) for each new option one class established for class size reduction for which the district had not previously received funding under class size reduction facilities programs.

(C) The remaining funds provided pursuant to subparagraph (A) shall be to provide funding for schoolsites that were eligible to receive a class size reduction land-locked waiver pursuant to Section 52122.6. The funds may be provided to districts to provide 50 percent of the cost of funding a facilities mitigation plan developed for the impacted site pursuant to Section 52122.7.

(D) Any funds not expended pursuant to subparagraphs (A), (B), or (C) shall be allocated to districts that request funding of forty thousand dollars ($40,000) for each teaching station that (1) was displaced as a result of the implementation of class size reduction and (2) received less than forty thousand dollars ($40,000) per teaching station in 1996–97 pursuant to Chapter 19 (commencing with Section 17200) of Part 10. Programs for which teaching stations may be restored may include child care, extended day care, school libraries, computer labs, and special education classrooms.

(b) Of the proceeds from the sale of bonds issued and sold pursuant to this chapter, as specified in subdivision (b) of Section 100410, not more than three billion three hundred fifty million dollars ($3,350,000,000) shall be allocated beginning in the 2000–01 fiscal year in accordance with the following schedule:

(1) Not less than one billion five hundred fifty million dollars ($1,550,000,000) for project funding related to the growth in enrollment of applicant school districts under Chapter 12.5 that have incurred or will incur enrollment increases.

(2) Not less than one billion three hundred million dollars ($1,300,000,000) for the reconstruction or modernization of facilities pursuant to Chapter 12.5.

(3) Not more than five hundred million dollars ($500,000,000) shall be deposited in the Public School Critical Hardship Account in the 1998 State School Facilities Fund and shall be allocated by the State Allocation Board to fund critical hardships as defined in Chapter 12.5. These funds may be expended for the acquisition of portable classrooms for use in accordance with Chapter 14 (commencing with Section 17085) of Part 10.

(c) Districts may use funds allocated pursuant to paragraph (2) of subdivision (a) and paragraph (2) of subdivision (b) for one or more of the following purposes in accordance with Chapter 12.5:

(1) The purchase and installation of air-conditioning equipment and insulation materials, and related costs.

(2) Construction projects or the purchase of furniture or equipment designed to increase school security or playground safety.

(3) The identification, assessment, or abatement in school facilities of hazardous asbestos.

(4) Project funding for high priority roof replacement projects.

(5) Any other renovation or modernization of facilities pursuant to Chapter 12.5.

(d) Funds allocated pursuant to paragraph (1) of subdivision (a) and paragraph (1) of subdivision (b) may be utilized to provide new construction grants, without regard to funding priorities, for applicant county boards of education under Chapter 12.5 that are eligible for that funding or classrooms for severely handicapped pupils and funding for classrooms for county community school pupils.

(e) (1) The Legislature may amend this section to adjust the minimum funding amounts specified in paragraphs (1) and (2) of subdivision (a) and the maximum funding amounts specified in paragraphs (3) and (4) of subdivision (a), and to adjust the minimum funding amounts specified in paragraphs (1) and (2) of subdivision (b) and the maximum funding amount specified in paragraph (3) of subdivision (b), by either of the following methods:

(A) By a statute, passed in each house of the Legislature by rollcall vote entered in the respective journals, by not less than two-thirds of the membership in each house concurring, if the statute is consistent with, and furthers the purposes of, this chapter.

(B) By a statute that becomes effective only when approved by the voters.

(2) Amendments pursuant to this subdivision may adjust the amounts to be expended pursuant to paragraphs (1) to (4), inclusive, of subdivision (a) or paragraphs (1) to (3), inclusive, of subdivision (b) or both, but may not increase or decrease the total amount to be expended pursuant to either subdivision.

Article 2. Kindergarten Through 12th Grade School Facilities Fiscal Provisions

100425. (a) Bonds in the total amount of six billion seven hundred million dollars ($6,700,000,000), not including the amount of any refunding bonds issued in accordance with Section 100444, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this chapter and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of the principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) Pursuant to this section, the Treasurer shall sell the bonds authorized by the State School Building Finance Committee established pursuant to Section 15909 at any different times necessary to service expenditures required by the apportionments.

100427. The State School Building Finance Committee, established by Section 15909 and composed of the Governor, the Controller, the Treasurer, the Director of Finance, and the Superintendent of Public Instruction, or their designated representatives, all of whom shall serve thereon without compensation, and a majority of whom shall constitute a quorum, is continued in existence for the purpose of this chapter. The Treasurer shall serve as chairperson of the committee. Two Members of the Senate appointed by the Senate Committee

on Rules, and two Members of the Assembly appointed by the Speaker of the Assembly, shall meet with and provide advice to the committee to the extent that the advisory participation is not incompatible with their respective positions as Members of the Legislature. For the purposes of this chapter, the Members of the Legislature shall constitute an interim investigating committee on the subject of this chapter and, as that committee, shall have the powers and duties imposed upon those committees by the Joint Rules of the Senate and the Assembly. The Director of Finance shall provide the assistance to the committee as it may require. The Attorney General of the state is the legal adviser of the committee.

100430. (a) The bonds authorized by this chapter shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), and all of the provisions of that law, except Section 16727 of the Government Code, apply to the bonds and to this chapter and are hereby incorporated in this chapter as though set forth in full in this chapter.

(b) For purposes of the State General Obligation Bond Law, the State Allocation Board is designated the "board" for purposes of administering the 1998 State School Facilities Fund.

100432. Upon request of the State Allocation Board from time to time, supported by a statement of the apportionments made and to be made for the purposes described in Sections 100415 and 100420, the State School Building Finance Committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter in order to fund the apportionments and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to fund those apportionments progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

100434. There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds each year. It is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act which is necessary to collect that additional sum.

100435. Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund in the State Treasury, for the purposes of this chapter, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this chapter, as the principal and interest become due and payable.

(b) The sum necessary to carry out Section 100440, appropriated without regard to fiscal years.

100436. The State Allocation Board may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account or any other approved form of interim financing, in accordance with Section 16312 of the Government Code, for the purpose of carrying out this chapter. The amount of the request shall not exceed the amount of the unsold bonds that the committee, by resolution, has authorized to be sold for the purpose of carrying out this chapter. The board shall execute any documents required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall

be deposited in the fund to be allocated by the board in accordance with this chapter.

100438. Notwithstanding any other provision of this chapter, or of the State General Obligation Bond Law, if the Treasurer sells bonds pursuant to this chapter that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes, subject to designated conditions, the Treasurer may maintain separate accounts for the investment of bond proceeds and for the investment earnings on those proceeds. The Treasurer may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or take any other action with respect to the investment and use of those bond proceeds required or desirable under federal law to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

100440. For the purposes of carrying out this chapter, the Director of Finance may authorize the withdrawal from the General Fund of an amount not to exceed the amount of the unsold bonds that have been authorized by the State School Building Finance Committee to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the 1998 State School Facilities Fund consistent with this chapter. Any money made available under this section shall be returned to the General Fund, plus an amount equal to the interest that the money would have earned in the Pooled Money Investment Account, from proceeds received from the sale of bonds for the purpose of carrying out this chapter.

100442. All money deposited in the 1998 State School Facilities Fund, that is derived from premium and accrued interest on bonds sold shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

100444. The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. Approval by the voters of the state for the issuance of the bonds described in this chapter includes the approval of the issuance of any bonds issued to refund any bonds originally issued under this chapter or any previously issued refunding bonds.

100446. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

Chapter 3. Higher Education Facilities

Article 1. Program Provision

100450. The Legislature finds and declares all of the following:

(a) California's economic and social prosperity relies on a higher education system that keeps pace with California's growth. In the coming decades, the state's economic prosperity will depend on increasing the productivity of the work force and on the ability to compete successfully in the world marketplace.

(b) The system of public higher education in this state includes the University of California, the Hastings College of the Law, the California State University, the California Community Colleges, and their respective off-campus centers. Each

of these institutions plays a vital role in maintaining California's dominance in higher education in the United States.

(c) Over the last several years, studies have been completed by the California Postsecondary Education Commission, the University of California, the California State University, and the California Community Colleges to assess their long-term and short-term capital needs. Those studies demonstrate that the long-term and short-term needs total, in the aggregate, seven hundred fifty million dollars ($750,000,000) per year into the next century.

(d) Proceeds from the sale of bonds issued and sold pursuant to this chapter may be used to fund construction on existing or new campuses and off-campus centers, including the construction of buildings and the acquisition of related fixtures, the renovation and reconstruction of facilities, site acquisition, the equipping of new, renovated, or reconstructed facilities, which equipment shall have an average useful life of 10 years; and to provide funds for the payment of preconstruction costs, including, but not limited to, preliminary plans and working drawings at the University of California, the Hastings College of the Law, the California State University and the California Community Colleges.

(e) The purposes of this article include assisting in meeting the capital outlay financing needs of California's public higher education system.

100455. (a) Two billion five hundred million dollars ($2,500,000,000) of the proceeds of bonds issued and sold pursuant to this part shall be deposited in the 1998 Higher Education Capital Outlay Bond Fund which is hereby established in the State Treasury. These funds shall be available for expenditure when appropriated.

(b) One billion two hundred fifty million dollars ($1,250,000,000) of the bonds described in subdivision (a), shall only be issued and sold pursuant to this chapter on or after July 1, 2000.

100457. (a) Of the amount of bonds issued and sold pursuant to subdivision (b) of Section 100455, one hundred sixty-five million dollars ($165,000,000) shall be allocated in the 2000–01 fiscal year to be available only for the following purposes:

(1) The development of new campuses of the University of California.

(2) The development of new campuses, small campuses with enrollments of less than 5,000 full-time equivalent students, and off-campus centers at the California State University and the California Community Colleges.

(b) The amount of the allocation of funds required pursuant to this section for the development of new campuses may be reduced by a future legislative act if the Legislature finds that state funds have been provided from sources other than the proceeds of bonds for capital outlay costs. The reduction shall be limited to the amount actually provided from sources other than bond proceeds.

100460. The Higher Education Facilities Finance Committee established pursuant to Section 67353 is hereby authorized to create a debt or debts, liability or liabilities, of the State of California pursuant to this chapter for the purpose of providing funds to aid the University of California, the Hastings College of the Law, the California State University, and the California Community Colleges.

Article 2. Higher Education Fiscal Provisions

100500. (a) Bonds in the total amount of two billion five hundred million dollars ($2,500,000,000), not including the amount of any refunding bonds issued in accordance with Section 100555, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this chapter and to reimburse the General Obligation Bond Expense

Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of the principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) Pursuant to this section, the Treasurer shall sell the bonds authorized by the Higher Education Facilities Finance Committee established pursuant to Section 67353 at any different times necessary to service expenditures required by the apportionments.

100510. (a) The bonds authorized by this chapter shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), and all of the provisions of that law, except Section 16727 of the Government Code, apply to the bonds and to this chapter and are hereby incorporated in this chapter as though set forth in full in this chapter.

(b) For the purposes of the State General Obligation Bond Law, each state agency administering an appropriation of the 1998 Higher Education Capital Outlay Bond Fund is designated as the "board" for projects funded pursuant to this chapter.

(c) The proceeds of the bonds issued and sold pursuant to this chapter shall be available for the purpose of funding aid to the University of California, the Hastings College of the Law, the California State University, and the California Community Colleges, for the construction on existing or new campuses, and their respective off-campus centers, including the construction of buildings and the acquisition of related fixtures, renovation, and reconstruction of facilities, for the acquisition of sites upon which these facilities are to be constructed, for the equipping of new, renovated, or reconstructed facilities, which equipment shall have a useful life of at least 10 years, to provide funds for payment of preconstruction costs, including, but not limited to, preliminary plans and working drawings.

100520. The Higher Education Facilities Finance Committee established pursuant to Section 67353 shall authorize the issuance of bonds under this chapter only to the extent necessary to fund the apportionments for the purposes described in this chapter that are expressly authorized by the Legislature in the annual Budget Act. Pursuant to that legislative direction, the committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter in order to carry out the purposes described in this chapter and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out those actions progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

100525. There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds each year. It is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act which is necessary to collect that additional sum.

100530. Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund in the State Treasury, for the purposes of this chapter, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this chapter, as the principal and interest become due and payable.

(b) The sum necessary to carry out Section 100545, appropriated without regard to fiscal years.

100535. The board, as defined in subdivision (b) of Section 100510, may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account or any other approved form of interim financing, in accordance with Section 16312 of the Government Code, for the purpose of carrying out this chapter. The amount of the request shall not exceed the amount of the unsold bonds that the committee, by resolution, has authorized to be sold for the purpose of carrying out this chapter. The board, as defined in subdivision (b) of Section 100510, shall execute any documents required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by the board in accordance with this chapter.

100540. Notwithstanding any other provision of this chapter, or of the State General Obligation Bond Law, if the Treasurer sells bonds pursuant to this chapter that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes, subject to designated conditions, the Treasurer may maintain separate accounts for the investment of bond proceeds and for the investment earnings on those proceeds. The Treasurer may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or take any other action with respect to the investment and use of those bond proceeds required or desirable under federal law to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

100545. (a) For the purposes of carrying out this chapter, the Director of Finance may authorize the withdrawal from the General Fund of an amount not to exceed the amount of the unsold bonds that have been authorized by the Higher Education Facilities Finance Committee to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the 1998 Higher Education Capital Outlay Bond Fund consistent with this chapter. Any money made available under this section shall be returned to the General Fund, plus an amount equal to the interest that the money would have earned in the Pooled Money Investment Account, from proceeds received from the sale of bonds for the purpose of carrying out this chapter.

(b) Any request forwarded to the Legislature and the Department of Finance for funds from this bond issue for expenditure for the purposes described in this chapter by the University of California, the California State University, or the California Community Colleges shall be accompanied by the five-year capital outlay plan. Requests forwarded by a university or college shall include a schedule that prioritizes the seismic retrofitting needed to significantly reduce, by the 2002–03 fiscal year, in the judgment of the particular university or college, seismic hazards in buildings identified as high priority by the university or college. Requests forwarded by the California Community Colleges shall be accompanied by a five-year capital outlay plan reflecting the needs and priorities of the community college system, prioritized on a statewide basis.

100550. All money deposited in the 1998 Higher Education Capital Outlay Bond Fund that is derived from premium and accrued interest on bonds sold

shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

100555. The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. Approval by the voters of the state for the issuance of the bonds described in this chapter includes the approval of the issuance of any bonds issued to refund any bonds originally issued under this chapter or any previously issued refunding bonds.

100560. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

MEASURES DEFEATED

INITIATIVE AMENDMENT SUBMITTED BY LEGISLATURE

Number on ballot

3. **Partisan Presidential Primary Elections.** (Statutes 1998, Chapter 147, SB 1505)

[Rejected by electors November 3, 1998.]

PROPOSED LAW

SECTION 1. This act shall be known and may be cited as the Save the Presidential Primary Act of 1998.

SEC. 2. Section 2151 of the Elections Code is amended to read:

2151. At the time of registering and of transferring registration, each elector may declare the name of the political party with which he or she intends to affiliate at the ensuing primary election. The name of that political party shall be stated in the affidavit of registration and the index.

The voter registration card shall inform the affiant that any elector may decline to state a political affiliation, and that all properly registered voters may vote for their choice at any primary election for any candidate for each office regardless of political affiliation and without a declaration of political faith or allegiance*, but no person shall be entitled to vote the ballot of any political party for delegates to a party's presidential nominating convention unless the person has stated the name of that party with which he or she intends to affiliate*. The voter registration card shall include a listing of all qualified political parties.

Notwithstanding any provision to the contrary, no person shall be permitted to vote the ballot for any elective political party central or district committee member other than the party designated in his or her registration, except as provided by Section 2152.

SEC. 3. Section 13203 of the Elections Code is amended to read:

13203. *(a)* Across the top of the ballot shall be printed in heavy-faced gothic capital type not smaller than 30-point, the words "OFFICIAL BALLOT." However, if the ballot is no wider than a single column, the words "OFFICIAL BALLOT" may be as small as 24-point. Beneath this heading, in the case of an

official primary election, shall be printed in 18-point boldfaced gothic capital type the words "OFFICIAL PRIMARY BALLOT." Beneath the heading line or lines, there shall be printed, in boldface type as large as the width of the ballot makes possible, the number of the congressional, Senate, and Assembly district, the name of the county in which the ballot is to be voted, and the date of the election.

(b) Partisan ballots used in a presidential primary election for selection of delegates for a party's presidential nominating convention shall prominently specify the name of the political party.

SEC. 4. Section 13206 of the Elections Code is amended to read:

13206. (a) On the *official primary* ballot used in a direct primary election, immediately below the instructions to voters, there shall be a box one-half inch high enclosed by a heavy-ruled line the same as the borderline. This box shall be as long as there are columns for the ballot and shall be set directly above these columns. Within the box shall be printed in 24-point boldfaced gothic capital type the words "Partisan Offices."

(b) The same style of box described in subdivision (a) shall also appear over the columns of the nonpartisan part of the *official primary* ballot and within the box in the same style and point size of type shall be printed "Nonpartisan Offices."

(c) This section shall not apply to *partisan presidential primary ballots or* ballots for elective political party central or district committee members prepared in accordance with Section 13300.

SEC. 5. Section 13300 of the Elections Code is amended to read:

13300. (a) By at least 29 days before the primary election, each county elections official shall prepare identical sample ballots for each voter ~~,~~ *;* provided*,* however, that *(1)* in the case of ballots involving elective political party central or district committee members, each county elections official shall prepare separate ballots for the sole use of persons registered with that party, as provided for in Section 2151 *, and (2) in the case of partisan primary ballots involving the selection of delegates to the presidential nominating convention of a political party, each county elections official shall prepare separate ballots for the sole use of persons registered with that political party* . On the official identical primary ballots, each county elections official shall place thereon in each case in the order provided in Chapter 2 (commencing with Section 13100), and under the appropriate title of each office, the names and party affiliations of all candidates organized randomly as provided in Section 13112 and not grouped by political party, for whom nomination papers have been duly filed with him or her or have been certified to him or her by the Secretary of State to be voted for in his or her county at the primary election.

(b) The sample ballots shall be identical to the official ballots *and partisan presidential primary ballots* , except as otherwise provided by law. The sample ballots shall be printed on paper of a different texture from the paper to be used for the official ballot.

(c) Except as provided in Section 13230, one sample official primary ballot shall be mailed to each voter entitled to vote at the primary not more than 40 nor less than 10 days before the election.

SEC. 6. Section 13301 of the Elections Code is amended to read:

13301. (a) At the time the county elections official prepares sample *partisan* ballots for the presidential primary, he or she shall also prepare a list with the name of candidates for delegates for each political party. The names of the

candidates for delegates of any political party shall be arranged upon the list of candidates for delegates of that party in parallel columns under their preference for President. The order of groups on the list shall be alphabetically according to the names of the persons they prefer appear upon the ballot. Each column shall be headed in boldface 10-point, gothic type as follows: "The following delegates are pledged to _____." (The blank being filled in with the name of that candidate for presidential nominee for whom the members of the group have expressed a preference.) The names of the candidates for delegates shall be printed in eight-point, roman capital type.

(b) Copies of the list of candidates for delegates of each party shall be submitted by the county elections official to the chairman of the county central committee of that party, and the county elections official shall post a copy of each list in a conspicuous place in his or her office.

SEC. 7. Section 13302 of the Elections Code is amended to read:

13302. The county elections official shall forthwith submit the sample official primary ballot *and partisan primary ballot, if any,* to the chairperson of the county central committee of each political party, and shall mail a copy to each candidate for whom nomination papers have been filed in his or her office or whose name has been certified to him or her by the Secretary of State, to the post office address as given in the nomination paper or certification. The county elections official shall post a copy of the sample ballot *or ballots* in a conspicuous place in his or her office.

INITIATIVE STATUTES

Number on ballot

7. **Air Quality Improvement. Tax Credits.**

[Submitted by the initiative and rejected by electors November 3, 1998.]

PROPOSED LAW

CALIFORNIA AIR QUALITY IMPROVEMENT ACT

SECTION 1. This act shall be known and may be cited as the California Air Quality Improvement Act of 1998.

SEC. 2. Part 10 (commencing with Section 44475.1) is added to Division 26 of the Health and Safety Code, to read:

PART 10. CALIFORNIA AIR QUALITY IMPROVEMENT PROGRAM

CHAPTER 1. FINDINGS, DEFINITIONS, AND PURPOSES

44475.1. The people of the State of California hereby find and declare all of the following, and state that to achieve and implement these findings and declarations is the intent and purpose of this measure:

(a) Air quality standards have been adopted to protect public health and the quality of life in California. In the interest of protecting every Californian's health and quality of life, it is necessary that California public agencies improve air quality by offering incentives for meeting mandated air quality standards as expeditiously as possible.

(b) Californians are acting now, by enacting this part, to encourage innovative programs that will help pay for the improvements necessary to improve California's air quality.

(c) Using tax credits to pay for the incremental costs of improved air pollution control technology that is not otherwise required by law or regulation is a cost-effective way to improve public health and environmental quality.

(d) California must substantially reduce air pollution from existing heavy-duty trucks and buses; construction, marine, and farming equipment; engines; locomotives; vessels; wildfires; outdoor burning of agricultural waste and rice straw; wood smoke from inefficient stoves and fireplaces; and ambient ground-level air pollution. Unless these existing sources of air pollution are reduced, the air quality improvements accomplished through the gradually increased use of new cleaner vehicles and equipment will not be sufficient to clean up California's air quickly enough to protect public health.

(e) Public transportation improves air quality. It is appropriate to protect and maintain funding for public transportation.

(f) Advanced technologies, like fuel cells, with great potential for improving air quality and reducing energy consumption, deserve public support in order to enter the market. Voluntary, incentive-based programs are needed to introduce these technologies.

(g) Notwithstanding the enactment of this part, the existing authority and duty of the State Air Resources Board and air quality districts continues to be to adopt technologically feasible and cost-effective control measures to reduce emissions from all sources subject to the jurisdiction of the state board or the districts, including sources described in this part, in order to achieve state and federal air quality standards as expeditiously as possible and to gain the air quality improvements so urgently needed by all Californians.

44475.2. As used in this part, the following terms have the following meanings:

(a) "Agricultural waste" means any vegetative materials grown pursuant to agricultural practices that otherwise would be burned in an outdoor, unenclosed situation. "Agricultural waste" does not include waste from forests or waste from timber harvesting governed by the Z'berg-Nejedly Forest Practices Act of 1973 (Chapter 8 (commencing with Section 4511) of Part 2 of Division 4 of the Public Resources Code).

(b) "District" means a district as defined in Section 39025.

(c) "Emissions reduction" means the reduction or elimination of emissions as compared to a baseline emissions rate, and the reduction, elimination, or removal of pollutants from the atmosphere.

(d) "Emissions" means emissions of pollutants into the air.

(e) "Engine" means an engine or a motor.

(f) "Entitlement" means a contract, franchise, license, permit, or other authorization granted by a local public agency to a person providing an essential public service.

(g) "Heat exchanger" means equipment that transfers heat and provides cooling, including an air conditioner unit, radiator, refrigeration unit, or similar air cooling device.

(h) "Light rail" means an urban rail transit system that is powered from overhead catenary wires.

(i) "Local public agency" means a city, county, or city and county; a public transit or transportation district or other transportation agency; a school

district; or any other special-purpose district other than a district as defined in subdivision (b).

(j) "NO_x" means oxides of nitrogen regulated under state or federal law.

(k) "Person" means a person as defined in Section 19.

(l) "Pollutant" means any substance for which the state board or the United States Environmental Protection Agency has adopted an ambient air quality standard, or a precursor to a substance for which an ambient air quality standard has been adopted. For the purposes of this part only, this definition supersedes the definition of "air pollutant" in Section 39013.

(m) "Project" means a purchase, retrofit, repower, or operational change to cause an emissions reduction.

(n) "Repower" or "repowering" means replacing an engine with a cleaner engine. The term generally refers to replacing an older engine without pollution control with a new, emissions-certified engine, although repowering may include replacing an older emissions-certified engine with a newer engine certified to lower emissions standards.

(o) "Retrofit" means making modifications to an existing engine, emission control system, exhaust system, heat exchanger, or fuel system so that the retrofitted engine or equipment has significantly lower emissions than the original engine or equipment, or removes pollutants from the atmosphere.

(p) "State board" means the State Air Resources Board created pursuant to Part 2 (commencing with Section 39500) of this division.

(q) "Toxic air contaminant" means toxic air contaminant as defined in Section 39655.

(r) "Vessel" means every type of watercraft, as defined in subdivision (a) of Section 9840 of the Vehicle Code, that is not required to be registered pursuant to the Vehicle Code because that vessel has a valid marine document issued by the United States Bureau of Customs or any successor federal agency. "Vessel" does not mean a vessel of the United States, of any other state or political subdivision thereof, or of a municipality of another state. For the purpose of this part only, the definition in this subdivision supersedes the definition of "marine vessel" in Section 39037.1. The state board may expand this definition by regulation to include categories of vessels that are subject to registration pursuant to the Vehicle Code if the state board determines that making the tax credit available would be a cost-effective method of reducing emissions from those vessels.

Chapter 2. Administration of the Program

44475.5. (a) The state board shall administer this part, and shall adopt all necessary regulations to implement this part, which creates a program for awarding tax credits and issuing certificates pursuant to Section 17052 or 23630 of the Revenue and Taxation Code to provide incentives for reducing emissions. The state board shall adopt regulations for selecting projects pursuant to this part, consistent with the intent, purpose, and requirements of this part.

(b) The state board may delegate to any district, pursuant to regulation or a memorandum of understanding, all or a specific part of its authority to award tax credits pursuant to Sections 44475.23, 44475.25, 44475.26, 44475.28, 44475.29, 44475.30, and 44475.33. Any district that is delegated this authority shall comply with this part and the state board's regulations to ensure that the district awards tax credits consistently with the requirements of this part and applicable provisions of the Revenue and Taxation Code. All tax credit certificates shall be issued solely by the state board. The state board shall assure that districts comply with the limits on tax credits that may be awarded pursuant to Section

44475.57 and with the other provisions of this part. The state board may rescind its delegation on finding that a district has not met any of the requirements of this part.

(c) The state board may authorize districts to assist in implementing this part, including, but not limited to, conducting local inspections, monitoring, and promoting the tax credit program.

(d) Consistent with the allocation of tax credits in Section 44475.57, the state board may, in its regulations, establish priorities and criteria for the reduction of emissions based on the specific air quality attainment needs of each district.

(e) Any regulation required by this part shall be initially adopted no later than June 1, 1999, and may be amended by the state board from time to time thereafter.

(f) Notwithstanding any other provision of law, the state board, when adopting initial regulations pursuant to this part that are subject to the deadline specified in subdivision (e), may, after at least one public hearing, adopt the regulations without review by the Office of Administrative Law if the state board makes a finding that the deadlines created by this part necessitate the adoption of the regulations within exceptionally short time periods during which review by the Office of Administrative Law would be impracticable and would prevent the timely implementation of this part in accord with the expectations of the voters and taxpayers that the tax credits authorized by this part will be available in the 1998–99 fiscal year.

(g) Except as provided in subdivision (f), any other regulation or order of repeal adopted pursuant to this part shall be otherwise subject to review by the Office of Administrative Law pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(h) The state board may use existing regulations to implement this part to the extent that they meet the requirements of this part.

44475.6. (a) The state board shall develop simple, standardized application packages for tax credits authorized by this part. The application packages shall include an application form, a brief description of the program, project eligibility criteria, the dollar value of tax credits available, descriptions of the selection criteria and evaluation process, specification of the documentation required, and a sample of the contract that applicants will be required to execute before being awarded a tax credit. The state board shall establish procedures to simplify and make understandable the application process for those seeking tax credits. The application package shall also explain how to obtain additional information about the program from the state board.

(b) Each applicant shall describe its project in sufficient detail, and submit any necessary information and supporting documentation not already in the possession of, or otherwise readily available to, the state board, for the state board properly to calculate the emissions reductions expected from the project and to evaluate the project using applicable project selection criteria. The applicant shall specify the dollar value of the tax credit needed for the applicant to undertake the project. An applicant may voluntarily provide any additional information about the emissions reduction potential of the project.

(c) The state board shall minimize the amount of information required to be submitted, and the amount of information required shall be related to the size, complexity, and uniqueness of the project. To minimize information required from applicants, the state board may rely on information from manufacturers,

distributors, suppliers, and installers; test data; and reasonable estimates of average emissions reductions.

(d) The first application packages shall be finalized and available for distribution by the state board not later than June 1, 1999.

(e) For categories of projects with substantially uniform emission and cost characteristics and large numbers of potential applicants, the state board shall establish standardized applications that simplify filing by those applicants.

44475.7. (a) Unless otherwise specified in this part, a manufacturer, distributor, supplier, installer, purchaser, or end user may apply for the tax credit authorized by this part. The state board may by regulation further define and clarify categories of eligible applicants.

(b) A tax credit for a single project may be awarded once and only to a single applicant, even though the project may have involved the participation of several potential applicants in the course of manufacturing, distributing, supplying, installing, and using the project. For each project for which a tax credit is awarded pursuant to this part, the state board shall specify in the certificate the California taxpayer awarded the tax credit.

(c) Notwithstanding subdivision (b), a conversion facility utilizing agricultural waste or rice straw shall be the only entity that may apply for a tax credit pursuant to Section 44475.30 or 44475.33, as the case may be.

(d) Notwithstanding any other provision of law, any tax credit awarded pursuant to this part may be used by any member of the taxpayer's unitary group.

44475.8. The state board shall require a manufacturer, installer, authorized dealer of the manufacturer, or distributor of vehicles or equipment eligible for a tax credit pursuant to this part to provide a reasonable warranty for the vehicles or equipment, if a warranty is reasonably necessary to protect the consumers or users of the vehicles or equipment.

44475.9. (a) No project is eligible under this part if it is required pursuant to the Federal Energy Policy Act of 1992, or by any local, state, or federal air quality statute, rule, or regulation in effect on the date the tax credit is to be awarded.

(b) Notwithstanding subdivision (a), the state board may award a tax credit for an otherwise qualified application even if the State Implementation Plan assumes that the project will occur, so long as the project is not required by a statute or regulation in effect on the date the tax credit is to be awarded.

(c) Emissions reductions resulting from a project awarded a tax credit pursuant to this part may not be used under any local, state, or federal emissions averaging or trading program to offset or reduce any emissions reduction obligation of any person effective at the time the tax credit was awarded. Emissions reductions resulting from a project awarded a tax credit pursuant to this part may not be banked under any local, state, or federal emissions banking program.

(d) Tax credits may not be awarded pursuant to this part for projects that are recipients of grants, loans, or other tax credits for the same costs paid for through any other government programs. However, in order to provide adequate incentives for projects, the state board may authorize the awarding of tax credits in combination with other government assistance programs if it determines that the recipient is a public agency and that the financial assistance was for a purpose other than emissions reduction, or if it determines that the dollar value of the tax credit that otherwise would be awarded pursuant to this part can be

reduced in proportion to the dollar value of the financial assistance provided by the other government program. This subdivision does not prohibit the awarding of tax credits for the operation or improvement of existing structures, facilities, vehicles, or equipment whose construction or purchase was undertaken with government financial assistance.

(e) Because other regulatory requirements apply to conversion facilities that utilize agricultural waste and rice straw, and are an effective substitute for the requirements of subdivisions (a) and (c), subdivisions (a) and (c) do not apply to projects for the utilization of agricultural waste or rice straw that meet the requirements of Section 44475.30 or 44475.33.

44475.10. (a) The state board shall develop standard-form long-term contracts for awarding tax credits for agricultural waste or rice straw conversion facilities that meet the requirements of Section 44475.30 or 44475.33 and for other categories of projects that the state board determines should be awarded tax credits pursuant to a long-term contract. If the facility or project is awarded a tax credit, the state board shall enter into a long-term contract with the applicant for the tax credit for the facility or project to assure stability for a term sufficient to encourage long-term presence in the market. The term of the long-term contract for agricultural waste or rice straw conversion facilities shall be for up to 10 years. The long-term contract shall specify the conditions applicable to the award of the tax credit and shall obligate the recipient of the tax credit to take the actions described in the application.

(b) The state board shall develop a simple contract for the award of tax credits for categories of projects for which a long-term contract is not necessary. The contract shall specify the conditions applicable to the award of the tax credit and shall obligate the recipient of the tax credit to take the actions described in the application.

(c) Once a tax credit certificate is issued, it may not be disallowed or revoked for the sole reason that the change in equipment, vehicles, or operations for which the tax credit had been awarded, is later required by statute or regulation.

44475.11. (a) This part does not require any person or local public agency to use the tax credit program established by this part. Any participation in the tax credit program shall be voluntary.

(b) The state board shall institute an outreach program to inform potential participants, technology suppliers and vendors, engine and equipment dealers and distributors, vehicle fleet operators, industry organizations and publications, local public agencies, rail and port organizations, and the public of the availability of tax credits pursuant to this part and of the requirements and objectives of the program. The state board shall vigorously recruit potential applicants and publish examples of successful projects.

44475.12. No later than June 1, 1999, and prior to the award of any tax credits pursuant to this part, the state board shall adopt regulations establishing procedures to monitor whether the emissions reductions for which tax credits were awarded are actually being achieved. Monitoring procedures may include a requirement, as part of the contract between the state board and the tax credit recipient, that the manufacturer, distributor, or installer of the relevant vehicle or equipment, or the recipient of the tax credit provide the state board with information about the project on an annual basis. The costs of monitoring may be included in the amount of the tax credit. Information required from tax credit recipients shall be minimized and the format for reporting the information shall be made simple and convenient. Monitoring requirements included in

a contract signed pursuant to the award of a tax credit may be changed only pursuant to an amendment to the contract that is agreed to by the state board and the person awarded the tax credit. The state board may revise the program monitoring procedures as appropriate to enhance program effectiveness and the enforcement of this section.

44475.13. The tax credits awarded pursuant to this part are not gifts of public funds to private parties, but, rather, are awarded in consideration of emissions reductions and benefits to public health and the environment that otherwise would not be realized in a timely manner, without regard to whether the ownership of the vehicles, engines, or equipment is public or private.

44475.14. Notwithstanding any other provision of law, the sum of four million three hundred fifty thousand dollars ($4,350,000) is hereby appropriated from the General Fund to the state board in each fiscal year, commencing with the 1998–99 fiscal year and concluding with the 2010–11 fiscal year, for the administration of this part, including allocations of funds to any district delegated responsibility under this part and allocations for the purposes of Section 42314.6. The program responsibility conferred by this part on the state board is entirely new and in addition to the existing responsibilities of the state board and the districts and may not be financed, wholly or partly, by the reduction or reallocation of funds appropriated to support those existing responsibilities.

Chapter 3. Project Eligibility Criteria

44475.15. (a) The state board shall establish a standard of cost-effectiveness for each category of project included in this chapter, expressed in dollars per ton of emissions reduced or pollutants removed from California's atmosphere, calculated pursuant to this section.

(b) The state board shall establish by regulation reasonable methodologies for evaluating project cost-effectiveness, taking into account the degree to which the emissions reductions can be quantified with certainty, the durability and reliability of emissions reductions, timeliness and availability of projects, a fair and reasonable discount rate or time value of public funds, and other factors necessary to achieve the intent and purposes of this part. Where applicable, these methodologies shall be consistent with cost-effectiveness methodologies already published or used by the state board. For projects in the same category that provide reductions of more than one pollutant or that reduce different pollutants, the state board shall establish methodologies for evaluating the total cost-effectiveness of the projects based on the relative public health and environmental importance of reducing each pollutant. The state board shall assess the emissions of toxic air contaminants from each project. Between projects that have similar cost-effectiveness in emissions reduction, the state board shall give preference to projects with greater reductions in emissions of toxic air contaminants.

(c) Subdivisions (a) and (b) do not apply to research and development projects as described in Section 44475.27, pilot and demonstration projects for which tax credits are authorized pursuant to subdivision (b) of Section 44475.57, or agricultural waste and rice straw utilization projects as described in Sections 44475.30 and 44475.33.

(d) Cost-effectiveness calculations shall be made by the state board as part of the evaluation of each application and may not be required as a part of the application for a tax credit. However, an applicant may voluntarily submit cost-effectiveness information. The cost-effectiveness calculations shall be based on the dollar value of the tax credits requested by the applicant, and the state board

and the applicant may not recalculate or revise the dollar value of tax credits from the amount requested in the application.

(e) The state board shall establish by regulation reasonable methodologies for evaluating project cost-effectiveness for projects eligible for a tax credit pursuant to Section 44475.30 or 44475.33, which shall be measured by the decrease in the number of tons of material diverted from agricultural waste or rice straw burning per dollar of tax credit, taking into account the degree to which the emissions reductions can be quantified with certainty, the durability and reliability of emission reductions, timeliness and availability of projects, a fair and reasonable discount rate or time value of public funds, and other factors necessary to achieve the intent and purposes of this part. Where applicable, these methodologies shall be consistent with cost-effectiveness methodologies already published or used by the state board. The state board shall give preference to projects that have the greatest decrease in number of tons of material from agricultural waste or rice straw burning per dollar of tax credit accepted by the agricultural waste or rice straw conversion facility receiving the tax credit and that maximize the reduction of outdoor, unenclosed burning of agricultural waste or rice straw. The state board shall take into account the incentives needed to transport the waste from farms to the facility.

(f) For categories of projects with substantially uniform emission and cost characteristics and large numbers of potential applicants, the state board shall establish standardized tax credit allocations based on estimates of average cost-effectiveness for all or a portion of the projects within a category that meet criteria specified by the state board. The standardized tax credit allocations shall meet the requirements of subdivision (b) and be designed to maximize the reduction in emissions from each category of projects consistent with the amount of tax credits allocated pursuant to Section 44475.57. Standardized tax credit allocations may not be established for research and development projects, as described in Section 44475.27, or for pilot and demonstration projects, as described in subdivision (b) of Section 44475.57.

(g) In calculating cost-effectiveness pursuant to this section, the state board may use reasonable estimates of emissions reductions in the absence of in-use or test data. In determining baseline emissions levels for vehicles or equipment, the state board shall use actual in-use emissions data whenever possible, but may use reasonable estimates of in-use emissions, or certification levels if sufficient in-use emissions data are not available. The state board shall accept and consider public comments in developing acceptable estimating methods for the purposes of this subdivision.

(h) Draft regulations implementing this section shall be issued no later than February 1, 1999.

44475.16. Commencing with the 1999–2000 biennium and no less frequently than every two years thereafter, the state board shall review technical data for stationary and portable equipment, engine, vehicle, and other technologies that are eligible for the award of tax credits to determine whether the criteria for projects eligible to be awarded tax credits should be revised to adjust the required amount of reduction in emissions compared with baseline equipment, engines, or vehicles certified as meeting prevailing emissions standards. After completing its review of available emission reduction technologies and their costs, the state board may revise the standard for cost-effectiveness by amending the regulations adopted pursuant to Section 44475.15 to improve the ability of the tax credits to serve as an incentive for the use of those technologies. A change in the standard

of cost-effectiveness made pursuant to this section may not require a change in, or affect the validity of, any contract already entered into by the state board or a district.

44475.17. The dollar value of a tax credit awarded pursuant to this part may be prorated by the state board to reflect an estimate of the amount of time the vehicle or equipment is actually operated in California, relative to its total estimated operating time. The state board may require owners or operators of vehicles or equipment awarded tax credits pursuant to this part to certify to the state board their compliance with this section, using fuel purchase receipts or other documentation required by the state board.

44475.20. (a) (1) To expedite the acquisition of cleaner buses and other heavy-duty fleet vehicles with cleaner engines that are owned by or used pursuant to a contract or other entitlement entered into with or granted by a local public agency, the local public agency or person providing an essential public service pursuant to the contract or other entitlement may apply to the state board for the award of a tax credit for the purchase or lease of buses or other heavy-duty fleet vehicles that emit substantially less pollutants than those vehicles whose emissions equal those allowable under current emissions standards as specified in paragraph (2). Up to 10 percent of the tax credits authorized for allocation pursuant to this section may be used to purchase or lease light rail vehicles. Tax credits may not be awarded for projects to acquire rights-of-way, install track, provide power systems, or acquire or construct any other infrastructure to support light rail transit.

(2) The state board shall establish the standard for cost-effectiveness, determined pursuant to Section 44475.15, to expedite the purchase or lease pursuant to this section of the cleanest vehicles that are feasible. The vehicles shall be able to meet normal safety and other requirements and practices for the intended use of the vehicles. To be eligible, each application for a tax credit shall document to the satisfaction of the state board an NO_x emissions reduction of at least 50 percent and no increase in particulate emissions beyond a negligible amount, or a particulate emissions reduction of at least 50 percent and no increase in NO_x emissions beyond a negligible amount, or a combined reduction in NO_x and particulate emissions of at least 60 percent.

(3) The state board shall award the tax credit to either the person selling or leasing the vehicles to the local public agency, the person selling the vehicles to the person that has the contract or other entitlement from the local public agency, or the person that has the contract or other entitlement from the local public agency.

(b) (1) To expedite the retrofit and repower of buses and other heavy-duty fleet vehicles owned by or used pursuant to a contract or other entitlement entered into with or granted by a local public agency, the local public agency or person providing an essential public service pursuant to the contract or other entitlement may apply to the state board for the award of a tax credit for the retrofit or repower of buses or other heavy-duty fleet vehicles to substantially reduce emissions of pollutants from those vehicles as specified in paragraph (2).

(2) The state board shall establish the standard for cost-effectiveness determined pursuant to Section 44475.15, to expedite pursuant to this section the cleanest feasible retrofit or repower of vehicles. The vehicles shall be able to meet normal safety and other requirements and practices for the intended use of the vehicles. Until June 30, 2004, each application for a tax credit shall document

to the satisfaction of the state board an NO_x emissions reduction of at least 40 percent and no increase in particulate emissions beyond a negligible amount, or a particulate emissions reduction of at least 20 percent and a decrease in NO_x emissions of at least 20 percent. On and after July 1, 2004, each application shall document to the satisfaction of the state board an NO_x emissions reduction of at least 50 percent and no increase in particulate emissions beyond a negligible amount, or a particulate emissions reduction of at least 50 percent and no increase in NO_x emissions beyond a negligible amount, or a combined reduction in NO_x and particulate emissions of at least 60 percent.

(3) The state board shall award the tax credit to either the person retrofitting or repowering the vehicles for the local public agency, or the person retrofitting or repowering the vehicles for the person that has the contract or other entitlement from the local public agency, or the person that has the contract or other entitlement from the local public agency.

(c) In awarding pilot and technology demonstration tax credits pursuant to this section and subdivision (b) of Section 44475.57, the state board shall give preference to projects that develop technologies that deliver substantial reductions in emissions of multiple pollutants and that offer the greatest likelihood of commercial viability.

44475.21. (a) (1) Notwithstanding subdivision (a) of Section 44475.11, to expedite the acquisition of cleaner state agency heavy-duty fleet vehicles, all state agencies authorized to purchase or lease heavy-duty fleet vehicles shall apply to the state board for tax credits, on behalf of vendors and lessors, for the purchase or lease of state vehicles that emit substantially less pollutants than those vehicles in the existing operating fleet of comparable vehicles whose emissions equal those allowable under current emissions standards that apply to those vehicles.

(2) The state board shall establish the standard for cost-effectiveness determined pursuant to Section 44475.15, to expedite pursuant to this section the purchase or lease of the cleanest vehicles that are feasible. The vehicles shall be able to meet normal safety and other requirements and practices for the intended use of the vehicles. To be eligible, each application for a tax credit shall document to the satisfaction of the state board an NO_x emissions reduction of at least 50 percent and no increase in particulate emissions beyond a negligible amount, or a particulate emissions reduction of at least 50 percent and no increase in NO_x emissions beyond a negligible amount, or a combined reduction in NO_x and particulate emissions of at least 60 percent.

(3) The state board shall award the tax credits to the persons selling or leasing the vehicles to the state agencies.

(b) (1) Notwithstanding subdivision (a) of Section 44475.11, to expedite the retrofit and repower of heavy-duty fleet vehicles operated by state agencies, state agencies shall apply to the state board for tax credits, on behalf of persons retrofitting or repowering state vehicles, to substantially reduce emissions of pollutants from those vehicles as specified in paragraph (2).

(2) The state board shall establish the standard for cost-effectiveness determined pursuant to Section 44475.15, to expedite pursuant to this section the cleanest feasible retrofit or repower of vehicles. The vehicles shall be able to meet normal safety and other requirements and practices for the intended use of the vehicles. Until June 30, 2004, each application for a tax credit shall document to the satisfaction of the state board an NO_x emissions reduction of at least 40 percent and no increase in particulate emissions beyond a negligible amount, or

a particulate emissions reduction of at least 20 percent and a decrease in NO_x emissions of at least 20 percent. On and after July 1, 2004, each application shall document to the satisfaction of the state board an NO_x emissions reduction of at least 50 percent and no increase in particulate emissions beyond a negligible amount, or a particulate emissions reduction of at least 50 percent and no increase in NO_x emissions beyond a negligible amount, or a combined reduction in NO_x and particulate emissions of at least 60 percent.

(3) The state board shall award the tax credits to the persons retrofitting or repowering the vehicles for state agencies.

44475.22. (a) The state board shall award tax credits to expedite the retrofit or repower of the vehicles and equipment described in subdivision (b).

(b) The following vehicles and equipment are eligible for a tax credit pursuant to this section:

(1) Motorized implements of husbandry, as defined in Division 16 (commencing with Section 36000) of the Vehicle Code, farm labor vehicles, and other motor vehicles, motorized equipment, and engines used in agricultural operations and not operated on highways.

(2) Buses that are not eligible for a tax credit pursuant to Section 44475.20 or 44475.21.

(3) Heavy-duty trucks with engines that have been certified under the heavy-duty engine standards of the state board or the United States Environmental Protection Agency.

(4) Motor vehicles, motorized equipment, and engines used in grading, excavation, and construction and not operated on highways.

(c) If certification of the retrofit kit or repower qualifications for a replacement engine is required by other provisions of law, the retrofit kit or repower qualifications shall be certified for sale and operation in California. The state board shall act on a certification application for a new retrofit kit or repower qualifications within one year after application by the manufacturer if at all feasible. Any certification otherwise required shall include certification for durability, which may be estimated based on reasonable criteria established by the state board.

(d) The reductions in emissions in each vehicle shall be as specified in this subdivision. Until June 30, 2004, each application for a tax credit shall document to the satisfaction of the state board an NO_x emissions reduction of at least 40 percent and no increase in particulate emissions beyond a negligible amount, or a particulate emissions reduction of at least 20 percent and a decrease in NO_x emissions of at least 20 percent. On and after July 1, 2004, each application for a tax credit shall document to the satisfaction of the state board an NO_x emissions reduction of at least 50 percent and no increase in particulate emissions beyond a negligible amount, or a particulate emissions reduction of at least 50 percent and no increase in NO_x emissions beyond a negligible amount, or a combined reduction in NO_x and particulate emissions of at least 60 percent.

44475.23. (a) To encourage conversion, retrofit, and repower of existing equipment at and near California ports that reduce emissions, the state board shall award tax credits for installing new, and retrofitting or repowering existing, engines and motorized equipment, or, pursuant to subdivision (b), changing operations of existing motorized equipment or vessels within a port.

(b) To the extent that operational changes in the speed or method of arriving at or departing from a port can be demonstrated to reduce emissions in a verifiable way, the state board may by regulation make those operational changes eligible

for a tax credit pursuant to this section. For operational changes, tax credits shall be awarded for a period of up to one year to the operator of the vessel on the basis of the cost-effectiveness of the operational change as determined pursuant to Sections 44475.15 and 44475.55.

44475.24. (a) To encourage the purchase of new, or the retrofit or repower of existing, locomotive engines and related equipment and to encourage operational changes that reduce emissions, the state board shall award tax credits based on the reduction of emissions resulting from the operational changes or the use of new, retrofit, or repowered locomotives or related equipment in California.

(b) The tax credit shall be awarded for the purchase of new, retrofit, or repowered locomotive engines and related equipment that are cleaner than comparable engines and equipment that meet existing federal standards.

(c) For operational changes in the use of existing locomotive engines and equipment, tax credits shall be awarded for a period of up to one year to the operator on the basis of cost-effectiveness of the operational change, as determined pursuant to Sections 44475.15 and 44475.55, and the operational changes shall be demonstrated to the satisfaction of the state board to reduce emissions in a verifiable way.

44475.25. (a) The purpose of this section is to reduce smoke and other visible emissions, particulates, and other emissions from hearth products, and to conserve energy.

(b) To expedite upgrading to clean burning and efficient hearth products and the retrofit of existing wood-fueled fireplaces and stoves, as described in subdivision (d), the state board shall award tax credits for the purchase of natural gas or propane-fueled hearth products; pellet-fueled hearth products; extremely clean, wood-fueled fireplace inserts, stoves, and built-in fireplaces; and extremely clean oil-fueled hearth products.

(c) A hearth product described in subdivision (d), when taken out of service and replaced by a hearth product described in subdivision (e), is eligible for a tax credit pursuant to this section.

(d) To qualify for the tax credit, the existing hearth product shall be taken out of service and traded in, and shall meet the following requirements:

(1) It is either a free-standing stove or fireplace insert or a "wood heater," as defined by the United States Environmental Protection Agency pursuant to the New Source Performance Standards for Residential Wood Heaters (40 C.F.R. Part 60, Subpart AAA), that is designed for the burning of cordwood or coal and was manufactured prior to 1988.

(2) It is still in usable condition.

(3) It will be disposed of to a metal recycler by the retailer offering the trade-in.

(e) To qualify for the tax credit, the new hearth product shall be one of the following types:

(1) An extremely clean wood-fueled stove, fireplace insert, or built-in fireplace that is certified by the United States Environmental Protection Agency.

(2) An extremely clean wood-fueled fireplace that meets the emissions standards established by the United States Environmental Protection Agency.

(3) A prefabricated wood-fueled fireplace that is a "nonaffected facility", as defined by the Environmental Protection Agency pursuant to 40 C.F.R. Part 60, Subpart AAA, and which demonstrates emissions at and below those approved by the Environmental Protection Agency.

(4) Any stove, fireplace, or built-in hearth product that is pellet-fueled.

(5) Any natural gas or propane-fueled stove, fireplace insert, or built-in fireplace with glass fronts for viewing the fire certified by the California Energy Commission as meeting one or more of the following test standards:

(A) Vented or direct vent gas room heater.

(B) Vented or direct vent gas wall furnace—gravity.

(C) Vented or direct vent gas wall heater—fan type.

(6) Any extremely clean oil-fueled hearth product that meets the federal efficiency standard for oil-fueled room heaters and provides a view of the fire.

(f) Hearth products described in paragraphs (1), (2), and (3) of subdivision (e) shall have at least a 10-year warranty for the combustion chamber and components affecting combustion emissions. At the discretion of the manufacturer, the warranty need not include paint, door gasket, glass window, and blower; abuse or misuse; or damage resulting from the use of inappropriate fuels, as determined by the manufacturer. If the product includes a catalytic converter, the warranty is not required to cover the catalytic converter, but the consumer of the product shall be given a spare catalytic converter at the time of sale.

(g) The state board shall give first priority to providing tax credits to accomplish the purposes of subdivision (c). If there is insufficient demand for tax credits pursuant to subdivision (c) in any fiscal year, the state board shall allocate the remaining tax credits from that fiscal year to the following two programs in the subsequent fiscal year:

(1) The conversion to, or replacement of existing wood-fueled fireplaces with, products listed in subdivision (e). Conversion of fireplaces by use of a wood, pellet, natural gas or propane, or oil-fueled insert shall include permanent conversion with an appropriate flue liner system listed by a nationally accredited third party recognized independent testing laboratory. The flue liner system shall connect from the hearth product to chimney termination.

(2) The installation of wood, pellet, natural gas or propane, or oil-fueled fireplaces or wood-fueled heaters in new construction if the hearth product meets the requirements of subdivision (e).

44475.26. The state board shall award tax credits for the purchase of new engines used in lawnmowers and other motorized landscaping or gardening equipment when the purchase is made in conjunction with trading in older, polluting two- and four-stroke engines used in lawnmowers and other landscaping or gardening equipment. The state board shall establish minimum standards to qualify for tax credits pursuant to this section to maximize emission reductions. The tax credit shall be sufficient to induce consumer participation in the program, but shall be awarded for less than the full cost of the new equipment. Tax credits may be awarded only if old equipment is traded in and taken out of service. The old equipment shall be disposed of to a recycler.

44475.27. The state board shall award tax credits for research on, and development and commercialization of, technologies that would facilitate emissions reductions from sources of pollutants described in this part and to persons who make contributions of money to publicly financed or nonprofit institutions to perform that research, development, and commercialization. Projects that are likely to reduce more than one pollutant and also improve energy efficiency shall be given highest priority. The technologies may include those subject to an experimental permit in California. To be eligible for the tax credit, the research, development, or commercialization shall have the potential to result in demonstrable public health or environmental benefits, or both.

44475.28. The state board shall award tax credits for the retrofit of existing, or the acquisition of new, stationary or portable equipment such as pumps and generators. New equipment shall have substantially lower emissions than required by current standards. Retrofit equipment shall emit substantially less emissions as a result of the retrofit. The tax credit shall be sufficient to induce consumer participation in the program, but shall be awarded for less than the full cost of the new equipment. The state board shall establish minimum standards to qualify for tax credits pursuant to this section to maximize emission reductions.

44475.29. To encourage the installation of equipment or devices to reduce ambient air pollution such as ozone from the atmosphere, the state board shall award tax credits for the installation or retrofitting of ambient air pollution destruction technology on heat exchangers. The state board shall establish reasonable methodologies for evaluating the cost-effectiveness of ambient air pollution destruction technology, taking into account the air quality benefits of ambient air pollution reductions considering population exposure.

44475.30. (a) The intent of this section is to reduce or eliminate smoke and other emissions resulting from the outdoor, unenclosed burning of agricultural waste. The state board shall award tax credits for agricultural waste conversion facilities that will either gasify the agricultural waste, convert it to usable chemicals or other products, or utilize it for the generation of electrical energy. The state board shall award tax credits to the facilities that utilize agricultural waste in an amount sufficient to cover, but not to exceed, the full reasonable cost of collection, sizing, delivery, and storage of this material. As provided in subdivision (c) of Section 44475.7, tax credits may be awarded only to the facilities described in this section. Tax credits may not be awarded for any land application of agricultural waste. In entering into a long-term contract for agricultural waste conversion projects, the state board may set a maximum tax credit per ton of agricultural waste delivered to the facility, and may establish different maximum amounts for different categories of agricultural waste. The state board shall calculate the full reasonable cost of collection, sizing, delivery, and storage of the agricultural waste to the closest operating facility. The amount of the tax credit shall be based on the tonnage of agricultural waste delivered to the facility and the amount of tax credit available for each ton.

(b) The state board shall develop criteria for selecting agricultural waste conversion projects based on the reduction or elimination of emissions from outdoor, unenclosed burning compared to the emissions at the agricultural waste conversion facility and associated transportation emissions. In ranking applications for tax credits to be awarded pursuant to this section, the state board shall first consider applications from those facilities using best available control technologies such as bag houses for particulate control and combustion technologies that minimize other emissions. The application for a tax credit pursuant to this section shall certify that the agricultural waste would otherwise have been burned outdoors, and not in any enclosure.

44475.31. To encourage the purchase of cleaner, new, heavy-duty trucks, motor vehicles, and engines of 50 horsepower or greater, the state board shall award tax credits for the purchase in California of a new heavy-duty truck, motor vehicle, or engine that has lower emissions than required by state or federal law on the basis of cost-effectiveness, as determined pursuant to Sections 44475.15 and 44475.55, subject to the following requirements:

(a) Applications for projects involving the purchase of new advanced technology engines or vehicles shall document to the satisfaction of the state

board an NO_x emissions reduction of at least 37.5 percent and no increase in particulate emissions beyond a negligible amount, or an NO_x emissions reduction of at least 25 percent and particulate emissions reduction of at least 25 percent compared to the emissions of a new engine or vehicle certified to the applicable baseline emissions standard for that engine or vehicle.

(b) On-road vehicles shall be greater than 14,000 pounds gross vehicle weight to be eligible for tax credits.

(c) All engines and vehicles shall be certified to the heavy-duty engine standards and test procedures specified by the state board.

(d) Engines and motor vehicles other than trucks shall be rated at 50 horsepower or more.

(e) For purposes of this section only, and notwithstanding Section 39033, "heavy-duty" means having a gross vehicle weight of greater than 14,000 pounds.

44475.32. To encourage the purchase of cleaner, new, off-road nonrecreational motor vehicles, and the replacement and retirement of older, more polluting, off-road nonrecreational motor vehicles, the state board shall award tax credits for the purchase of off-road nonrecreational motor vehicles in California on the basis of cost-effectiveness as determined pursuant to Sections 44475.15 and 44475.55. The state board shall establish minimum standards to qualify for tax credits to maximize emissions reductions. Only nonrecreational motor vehicles of less than 50 horsepower may qualify for tax credits pursuant to this section. The retired nonrecreational motor vehicle shall be disposed of to a recycler.

44475.33. (a) The intent of this section is to reduce or eliminate smoke and other emissions resulting from the outdoor, unenclosed burning of rice straw. The state board shall award tax credits for rice straw conversion facilities that will either gasify the rice straw, convert it to usable chemicals or other products (such as paper, livestock feed, or building materials), or utilize it for the generation of electrical energy. The state board shall award tax credits to facilities that utilize rice straw in an amount sufficient to cover, but not to exceed, the full reasonable cost of collection, delivery, sizing, and storage of the rice straw. As provided in subdivision (c) of Section 44475.7, tax credits may be awarded only to the facilities described in this section. Tax credits may not be awarded for any land application of rice straw. In entering into a long-term contract for rice straw conversion projects, the state board may set a maximum tax credit per ton of rice straw delivered to the facility. The state board shall calculate the full reasonable cost of collection, delivery, sizing, and storage of the rice straw to the closest operating facility. The amount of the tax credit shall be based on the tonnage of rice straw delivered to the facility and the amount of tax credit available for each ton.

(b) The state board shall develop criteria for selecting rice straw conversion projects based on the reduction or elimination of emissions from outdoor, unenclosed burning compared to the emissions at the rice straw conversion facility and associated transportation emissions. In ranking applications for tax credits to be awarded pursuant to this section, the state board shall first consider applications from those facilities using best available control technologies such as bag houses for particulate control and combustion technologies that minimize other emissions. The application for a tax credit pursuant to this section shall certify that rice straw otherwise would have ultimately been burned outdoors, and not in any enclosure, and that, consistent with the requirements

of subdivision (d) of Section 44475.9, awarding the tax credit will reduce air pollution by assisting in the implementation of Section 41865 and Chapter 4.5 (commencing with Section 39750) of Part 2.

CHAPTER 4. GENERAL PROGRAM REQUIREMENTS

44475.40. Before a tax credit may be awarded pursuant to this part, the state board shall approve the capability of the particular retrofit technology, vehicle, engine, equipment, or product to meet the criteria for each specified in Chapter 3 (commencing with Section 44475.15). Any certification of vehicles or equipment necessary for operation in California shall be pursuant to the applicable state or federal law.

44475.41. To maintain eligibility for a tax credit, any motor vehicle, vehicle, or implement of husbandry that is required by the Vehicle Code to be registered, and that has been awarded tax credits pursuant to this part, shall have in force at all times a valid registration for operation in California.

44475.42. Subject to the cost-effectiveness requirements of this part, the state board may award tax credits for up to the incremental costs of a project, including incrementally higher operating and lease costs as well as incremental capital costs, as well as for any necessary incentives to encourage the acquisition of new vehicles and equipment, the retrofitting of existing vehicles and equipment, or the adoption of innovative technologies by users.

44475.43. (a) The state board shall by regulation establish procedures to assure that any equipment or vehicles traded in pursuant to this part shall have a reasonable remaining service life, and that the equipment or vehicles are scrapped after trade-in or retirement and not rebuilt or resold. Equipment and vehicles that are traded in or retired shall be destroyed, and the metal parts shall be recycled.

(b) The state board may require evidence that the vehicles or equipment eligible for a tax credit pursuant to this part will have a reasonable expected useful life.

44475.44. The state board and the districts, as appropriate, shall take all appropriate and necessary actions to ensure that emissions reductions achieved pursuant to this part are credited by the United States Environmental Protection Agency to emissions reduction objectives in the State Implementation Plan.

44475.45. In addition to the requirements of Section 44475.16, after study of available emissions reduction technologies and after public notice and comment, the state board may reduce the minimum percentage NO_x and particulate reduction criteria for purchase, retrofits, and add-on equipment stated in Sections 44475.20, 44475.21, 44475.22, and 44475.31 if necessary to maximize emissions reductions from the purchase, retrofit, or repowering of vehicles and equipment pursuant to those sections.

44475.46. The state board may specify conditions of use and other terms with respect to the purchase of vehicles and equipment and the operation of equipment acquired pursuant to this part.

44475.47. The state board may consider ways to increase the flexibility and effectiveness of this program, especially with respect to increasing the usability of the tax credits authorized by this part, and may propose legislation to improve the program. This section does not authorize the Legislature to amend this part.

CHAPTER 5. AWARD OF TAX CREDITS

44475.50. The state board or district, as the case may be, has sole discretion to determine the sufficiency and completeness of any application and may

determine that an application for a tax credit is not in compliance with this part, and its intent and purposes, and may reject the application.

44475.51. The state board or district, as the case may be, shall expedite the processing of applications and awarding of tax credits to the greatest extent possible.

44475.52. (a) Consistent with the other requirements of this part, the state board shall adopt regulations to award tax credits to projects within each project category set forth in Section 44475.57. Consistent with the other requirements of this part, including, but not limited to, Section 44475.55, the state board may adopt selection criteria to allocate tax credits within each project category to projects with equivalent cost-effectiveness rankings.

(b) Within each category of tax credits listed in Section 44475.57, if equivalent applications are submitted, the state board or district shall first select the application from an applicant that did not receive a tax credit within that category in the previous quarter. This subdivision does not prevent the state board or a district from awarding long-term contracts for tax credits. For purposes of this subdivision, "equivalent applications" means applications that are equally cost-effective and equal with respect to other criteria required by this part or by regulations adopted pursuant to this part.

44475.53. The state board may award tax credits pursuant to this part for projects that conform with the requirements of this part and with applicable regulations of the state board, even if the projects are initiated after the effective date of this part, but before the regulations implementing this part are adopted.

44475.54. (a) The state board or district, as the case may be, shall evaluate each application for consistency with the content requirements of Section 44475.6 and the other requirements of this part and the regulations of the state board, shall determine the emissions reductions that will result from implementation of each project or category of projects using the methodology established pursuant to Section 44475.15, and shall apply the procedure for ranking projects set forth in Section 44475.55. The state board shall award tax credits to eligible applicants in accordance with the evaluations and determinations made pursuant to this section and Section 44475.55.

(b) Any project that does not meet the cost-effectiveness standard established by the state board pursuant to Section 44475.15, as determined by the state board or district in its sole discretion, shall not be eligible for a tax credit.

44475.55. In each calendar quarter, for any category of project specified in Section 44475.20 (public fleet vehicles), 44475.21 (state heavy-duty fleet vehicles), 44475.22 (retrofit), 44475.23 (ports), 44475.24 (locomotives), 44475.28 (stationary and portable equipment), 44475.29 (ambient air pollution destruction technology), 44475.30 (agricultural waste), 44475.31 (new heavy-duty vehicles), 44475.32 (off-road vehicles), or 44475.33 (rice straw) for which one or more applications meet the cost-effectiveness standard established by the state board, the state board shall rank the qualifying proposed projects in order from the most cost-effective to the least cost-effective. The state board shall award tax credits according to this ranking until all credits available for the particular category of project for that quarter have been awarded or no qualifying projects remain. If the state board is unable to rank two or more projects because they have similar cost-effectiveness in emissions reductions, the state board shall give preference to the project with greater reductions in emissions of toxic air contaminants, in accordance with the procedure in subdivision (b) of Section 44475.15. This section does not apply to projects included in the standardized tax

credit allocations established pursuant to subdivision (f) of Section 44475.15. In categories in which districts have been delegated authority to award tax credits, the districts shall cooperate with the state board in implementing this section.

44475.56. (a) Upon the determination of the state board to award a tax credit, the successful applicant shall execute a long-term or short-term contract, as the case may be, as provided in Section 44475.10.

(b) With respect to any tax credit that may be claimed in more than one taxable or income year, the state board shall allocate the entire dollar value of that tax credit to the fiscal year in which the applicant executed the contract. The applicant may thereafter claim portions of the unused amount of the tax credit in subsequent taxable or income years until the total amount of the tax credit is exhausted. The unused amount that may be claimed is not at any time subject to the operation of subdivision (b) of Section 44475.58.

(c) In lieu of the procedure authorized in subdivision (b), at the election of the applicant, the long-term contract may provide that the dollar value of the tax credit may be allocated in equal allotments to two or more fiscal years, up to a total of 10 fiscal years, designated by the applicant. A single long-term contract shall be entered into for multiyear allotments, but, at the time the contract is signed, the state board shall issue a separate tax credit certificate for each allotment. In any taxable or income year in which an allotment may be claimed, the applicant may elect to claim less than the full dollar value of the allotment and may thereafter claim the unused portion of that allotment in subsequent taxable or income years until the total amount of the allotment is exhausted. The unused portion of an allotment may be claimed in the same taxable or income year for which a new allotment is allocated. In any fiscal year in which subdivision (b) of Section 44475.58 is implemented, the dollar value of the allotment of the tax credit allocated to that fiscal year may not be reduced.

44475.57. (a) The state board shall award tax credits in each fiscal year in accordance with the following schedule:

Tax Credits In Millions Of Dollars	*Section*	*Category*
$35	*44475.20(a)*	*New public fleet vehicles*
$ 5	*44475.20(b)*	*Retrofit and repower public fleet vehicles*
$10	*44475.21(a)*	*New state heavy-duty fleets*
$ 5	*44475.21(b)*	*Retrofit and repower state heavy-duty vehicles*
$34	*44475.22*	*Retrofit of older, heavy-duty trucks and equipment*
$15	*44475.23*	*Ports*
$10	*44475.24*	*Locomotives*
$10	*44475.25*	*Hearth products*
$ 5	*44475.26*	*Lawn and garden equipment*
$20	*44475.27*	*Research and development*
$ 3	*44475.28*	*Stationary and portable equipment*
$15	*44475.29*	*Ambient air pollution destruction technology*
$17	*44475.30*	*Agricultural waste conversion facilities*
$25	*44475.31*	*New heavy-duty and 50+ HP motor vehicles*
$ 3	*44475.32*	*New off-road, nonrecreational motor vehicles*
$ 6	*44475.33*	*Rice straw conversion facilities*

(b) (1) The state board shall allocate up to 10 percent of the dollar value of tax credits authorized in each category listed in subdivision (a), except Section 44475.20, for pilot or technology demonstration projects that develop technologies to reduce pollutants from the source identified in each section. The state board shall award tax credits pursuant to this subdivision to the extent that qualified applications are received, up to the 10-percent limit specified in this paragraph.

(2) In implementing this subdivision, highest priority shall be given to projects that may substantially reduce emissions of more than one air pollutant and have the greatest likelihood of commercial viability. Projects that will meet such criteria as durability, safety, reliability, and reduction of actual in-use emissions also shall be given high priority. To be eligible for tax credits, advanced technologies shall have the potential to substantially reduce emissions of pollutants.

(3) This subdivision does not apply to Section 44475.27.

(4) Notwithstanding paragraph (1), the state board shall allocate up to 12 percent of the dollar value of tax credits authorized in subdivision (a) for pilot or technology demonstration projects undertaken pursuant to Section 44475.20 that develop technologies to reduce pollutants from the source identified in that section. The state board shall award tax credits pursuant to this paragraph to the extent that qualified applications are received, up to the 12-percent limit specified in this paragraph. The total dollar value of tax credits allocated by this paragraph from Section 44475.20 may be used for pilot and demonstration projects pursuant to the purposes of subdivision (a) of Section 44475.20.

44475.58. (a) (1) To the extent that applications have been submitted for eligible projects, the state board or district shall award tax credits pursuant to this part at least once per calendar quarter for each category of project specified in Chapter 3 (commencing with Section 44475.15).

(2) In any fiscal year for which there are insufficient qualified tax credit applications in a particular category set forth in the schedule in Section 44475.57, or in the event of a reduction in the tax credits allowed due to the operation of subdivision (b), the state board shall retain the tax credits not awarded pursuant to Section 44475.57 for award in that category for use in a subsequent fiscal year. In awarding tax credits retained from previous years, the state board shall seek to allocate the tax credits in equal allotments throughout the remaining years of the program, to reduce the impact of the award of the deferred tax credits in any single fiscal year.

(b) The Department of Finance may reduce the total amount of tax credits to be awarded in a fiscal year following a fiscal year in which General Fund receipts were lower than General Fund receipts in the previous fiscal year. The Department of Finance may also reduce the total amount of tax credits to be awarded within a fiscal year if General Fund receipts in that fiscal year are lower from July 1 to March 31 of that fiscal year compared to the same period in the previous fiscal year. In addition, the Department of Finance may reduce the total amount of tax credits to be awarded in each of the 1998–99 and 1999–2000 fiscal years if General Fund receipts did not increase, compared to the previous fiscal year, in an amount to equal the amount of tax credits to be awarded in each of those fiscal years. In the event of any reductions made by the Department of Finance pursuant to this subdivision, the state board shall allocate the reductions in the same proportion as the tax credits are allocated pursuant to Section 44475.57. Tax credits awarded as part of a long-term contract, or pursuant to

the carryover provisions set forth in Sections 17052 and 23630 of the Revenue and Taxation Code, may not be reduced.

44475.59. (a) An annual audit shall be performed to determine whether this part is being carried out in accordance with the intent, purposes, and requirements of this part. The audit shall include review of the administration of the program and expenses incurred pursuant to Section 44475.14, taking into account the costs of beginning the program. The Department of Finance shall contract with a private auditing firm to conduct the audit. On completion of the audit, the Department of Finance shall immediately report the results of the audit to the Governor, the Legislature, the state board, and the public. The state board shall report to the Governor, the Legislature, and the public its response to the results and recommendations of the audit within 90 days of completion of the audit. If the audit recommends a reduction in the cost of administering the program, the state board shall reduce its administrative costs or provide a written explanation to the Governor and the Legislature as to why the administrative expenses cannot be reduced.

(b) The first audit shall be for the 1998–99 fiscal year. The Legislature shall appropriate sufficient funds for each fiscal year from the General Fund to the Department of Finance to pay for the audit.

44475.60. The Franchise Tax Board shall calculate the aggregate amount of tax credits awarded by the state board and districts and claimed by taxpayers, as reported pursuant to subdivision (b) of Section 44475.62, and shall report that amount to the Controller, the Director of Finance, and the State Department of Education for each fiscal year. That amount shall represent the total amount of tax credits approved and claimed pursuant to this part for purposes of determining the amount of "General Fund revenues which may be appropriated pursuant to Article XIII B", as that phrase is used in paragraph (1) of subdivision (b) of Section 8 of Article XVI of the California Constitution, and in calculating moneys to be applied by the state for the support of school districts and community college districts. Notwithstanding any other provision of law, the amount of the tax credits shall be added to General Fund revenues otherwise considered in making those calculations required by Section 8. The Legislature may amend this section to better achieve its intent, which is to assure that this part does not diminish funding for school districts or community college districts to a level below what would be required absent the tax credits authorized by this part.

44475.61. Notwithstanding any other provision of law, tax credits approved pursuant to this part shall be considered "General Fund revenues which may be appropriated pursuant to Article XIII B", as that phrase is used in paragraph (1) of subdivision (b) of Section 8 of Article XVI of the California Constitution, and in calculating moneys to be applied by the state for the support of school districts and community college districts. Those tax credits shall be added to General Fund revenues otherwise considered in making those calculations required by Section 8. The Legislature may amend this section to better achieve its intent, which is to assure that this part does not diminish funding for school districts or community college districts to a level below what would be required absent the tax credits authorized by this part.

44475.62. (a) After the end of each quarter, the state board shall publish a list of all projects awarded tax credits under this program during the previous quarter by the state board and any participating district. The report shall include for each project a description of the project, the amount of annual emissions reductions estimated to result from the project, the number of vehicles or pieces

of equipment involved, the cost-effectiveness of the project, and other items considered relevant by the state board. The report shall be transmitted to the Governor, the Legislature, and the public.

(b) The state board shall furnish a list to the Franchise Tax Board after the end of each quarter, in the form and manner agreed upon by the Franchise Tax Board, containing the names, taxpayer identification numbers (including taxpayer identification numbers for each partner or shareholder, as applicable), a description of the tax credit awarded, and the total amount of credit approved for each person awarded a tax credit in that quarter.

44475.63. (a) In the event that the recipient of the tax credit or operator of the equipment, vehicles, locomotives, off-road nonrecreational motor vehicles, or vessels purchased or operated pursuant to the award of the tax credit violates the terms of the contract pursuant to which the tax credit was awarded, the state board may initiate an action to rescind the contract, invalidate the dollar value of any unused tax credit, and recover from the recipient an amount of money equal to the dollar value of the tax credit used, together with interest as computed on deficiency assessments.

(b) Any money recovered pursuant to this section shall be available for appropriation for the purposes of Section 44475.27, and for no other purpose.

(c) Any unused tax credit invalidated pursuant to this section shall be available for award in a subsequent fiscal year by the state board for the same category for which the tax credit originally was awarded.

(d) The state board shall notify the Franchise Tax Board of every action initiated pursuant to this section. The initiation of an action pursuant to this section does not preclude the imposition of any fine, forfeiture, or other penalty or undertaking an administrative enforcement action pursuant to any other provision of law or regulation.

44475.64. Personal services and consulting contracts entered into pursuant to this part are not subject to approval by the Department of General Services if the state board does all of the following:

(a) Designates a state board officer as responsible and directly accountable for the state board's contracting program.

(b) Establishes written policies and procedures and a management system ensuring that state board's contracting activities comply with applicable provisions of law and regulations and that it has demonstrated the ability to carry out these policies and procedures and to implement the management system.

(c) Establishes a plan for ensuring that contracting personnel are adequately trained in contract administration and contract management.

(d) Conducts an audit every two years of the contracting program and reports to the Department of General Services as the department may require.

(e) Establishes procedures for reporting to the Legislature on the contracting program.

CHAPTER 6. REPEAL

44475.70. Section 44475.57 shall continue in effect until January 1, 2011, and is repealed as of that date. The state board and districts may award no further tax credits after January 1, 2011, unless Section 44475.57 is reenacted and becomes effective on or after that date. The Legislature may reenact Section 44475.57 by majority vote. The reenacted section shall take effect on or after January 1, 2011.

SEC. 3. Section 17039 of the Revenue and Taxation Code is amended to read:

17039. (a) Notwithstanding any provision in this part to the contrary, for the purposes of computing tax credits, the term "net tax" means the tax imposed under either Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to lump-sum distributions) less the credits allowed by Section 17054 (relating to personal exemption credits) 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 former 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 former 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 former Section 17053.11 (relating to program area hiring credit).

(K) For each taxable year beginning on or after January 1, 1994, the credit allowed by Section 17053.17 (relating to Los Angeles Revitalization Zone hiring credit).

(L) The credit allowed by Section 17053.33 (relating to targeted tax area sales or use tax credit).

(M) The credit allowed by Section 17053.34 (relating to targeted tax area hiring credit).

(N) The credit allowed by Section 17053.49 (relating to qualified property).

(O) The credit allowed by Section 17053.70 (relating to enterprise zone sales or use tax credit).

(P) The credit allowed by Section 17053.74 (relating to enterprise zone hiring credit).

(Q) The credit allowed by Section 17057 (relating to clinical testing expenses).

(R) The credit allowed by Section 17058 (relating to low-income housing).

(S) The credit allowed by Section 17061 (relating to refunds pursuant to the Unemployment Insurance Code).

(T) Credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(U) The credit allowed by Section 19002 (relating to tax withholding).

(V) The credit allowed by Section 17052 (relating to reductions in emissions of air pollutants).

(2) Any credit that 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 that has been repealed or made inoperative shall continue to be allowed to be carried over under the provisions of that section as it read immediately prior to being repealed or becoming inoperative.

(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 shall be allocated 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) Unless otherwise provided, in the case of a partnership, any credit allowed by this part shall be computed at the partnership level, and any limitation on the expenses qualifying for the credit or limitation upon the amount of the credit shall be applied to the partnership and to each partner.

(g) (1) With respect to any taxpayer that directly or indirectly owns an interest in a business entity that is disregarded for tax purposes pursuant to Section 23038 and any regulations thereunder, the amount of any credit or credit carryforward allowable for any taxable year attributable to the disregarded business entity shall be limited in accordance with paragraphs (2) and (3).

(2) The amount of any credit otherwise allowed under this part, including any credit carryover from prior years, that may be applied to reduce the taxpayer's "net tax," as defined in subdivision (a), for the taxable year shall be limited

to an amount equal to the excess of the taxpayer's regular tax (as defined in Section 17062), determined by including income attributable to the disregarded business entity that generated the credit or credit carryover, over the taxpayer's regular tax (as defined in Section 17062), determined by excluding the income attributable to that disregarded business entity. No credit shall be allowed if the taxpayer's regular tax (as defined in Section 17062), determined by including the income attributable to the disregarded business entity, is less than the taxpayer's regular tax (as defined in Section 17062), determined by excluding the income attributable to the disregarded business entity.

(3) If the amount of a credit allowed pursuant to the section establishing the credit exceeds the amount allowable under this subdivision in any taxable year, the excess amount may be carried over to subsequent taxable years pursuant to subdivisions (c) and (d).

SEC. 4. Section 17052 is added to the Revenue and Taxation Code, to read:

17052. (a) For each taxable year beginning on or after January 1, 1999, there shall be allowed as a credit against the amount of "net tax," as defined in Section 17039, an amount equal to the tax credit awarded pursuant to Part 10 (commencing with Section 44475.1) of Division 26 of the Health and Safety Code.

(b) The aggregate amount of tax credits granted to all taxpayers pursuant to this section and Section 23630 may not exceed two hundred eighteen million dollars ($218,000,000) for each fiscal year, plus the amount of tax credits that are retained pursuant to paragraph (2) of subdivision (a) of Section 44475.58 of the Health and Safety Code.

(c) 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 until the credit has been exhausted.

(d) The State Air Resources Board shall do all of the following:

(1) Certify that the taxpayer has been awarded the tax credit as specified in subdivision (a).

(2) Issue tax credit certificates in an aggregate amount that shall not exceed the limit specified in subdivision (b).

(3) Furnish each year a list to the Franchise Tax Board, in a form or manner agreed upon by the Franchise Tax Board and the State Air Resources Board, of the qualified taxpayers that were issued tax credit certificates. If possible, the list shall be in a computer readable form.

(4) Provide the taxpayer with copies of the tax credit certificate.

(5) Obtain the taxpayer's identification number; or, in the case of an organization taxed as a partnership, the taxpayer's identification number of each partner; or, in the case of a Subchapter S corporation, the taxpayer's identification number of each shareholder.

(6) No later than 60 days following the close of each fiscal year within which the credit under this section is available, provide to the Legislature a report with respect to that fiscal year that includes all of the following:

(A) The number of tax credit certificates requested and issued.

(B) The types of taxpayers receiving the tax credit certificates.

(e) To be eligible for the tax credit, the taxpayer shall do all of the following:

(1) As part of the taxpayer's request for a tax credit, provide the State Air Resources Board with documents, as deemed necessary by the State Air

Resources Board, verifying that the requirements of this section and Part 10 (commencing with Section 44475.1) of Division 26 of the Health and Safety Code have been met.

(2) Retain a copy of the tax credit certificate issued by the State Air Resources Board as specified in subdivision (d).

(3) Provide a copy of the tax credit certificate to the Franchise Tax Board upon request.

(4) Provide the State Air Resources Board with the taxpayer's identification number; or, in the case of an organization taxed as a partnership, the taxpayer identification numbers of each partner; or, in the case of a Subchapter S corporation, the taxpayer's identification number of each shareholder.

(5) If the taxpayer fails to comply with the requirements of this subdivision, no credit may be awarded to that taxpayer until the taxpayer complies.

(f) Any credit allowed pursuant to this section shall be in lieu of any other credit otherwise allowable pursuant to this part for the same purchase, retrofit, repower, or operational change that is the basis for the tax credit under this section. In addition, any deduction for the same purchase, retrofit, repower, or operational change that is the basis for the tax credit under this section shall be reduced, on a pro rata basis, by the part of the purchase, retrofit, repower, or operational change that was paid for by the credit awarded pursuant to this section.

SEC. 5. 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 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 17935 or Section 23081, the tax on limited liability companies, imposed under Section 17941 or Section 23091, and the tax on registered limited liability partnerships and foreign limited liability partnerships imposed under Section 17948 or Section 23097.

(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 that do not contain carryover provisions.

(2) Credits that, 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 former Section 23612 (relating to sales and use tax credit).

(H) The credit allowed by Section 23612.2 (relating to enterprise zone sales or use tax credit).

(I) The credit allowed by Section 23612.6 (relating to Los Angeles Revitalization Zone sales tax credit).

(J) The credit allowed by former Section 23622 (relating to enterprise zone hiring credit).

(K) The credit allowed by Section 23622.7 (relating to enterprise zone hiring credit).

(L) The credit allowed by former Section 23623 (relating to program area hiring credit).

(M) For each income year beginning on or after January 1, 1994, the credit allowed by Section 23623.5 (relating to Los Angeles Revitalization Zone hiring credit).

(N) The credit allowed by Section 23625 (relating to Los Angeles Revitalization Zone hiring credit).

(O) *The credit allowed by Section 23630 (relating to reductions in emissions of air pollutants).*

(P) The credit allowed by Section 23633 (relating to targeted tax area sales or use tax credit).

~~(P)~~

(Q) The credit allowed by Section 23634 (relating to targeted tax area hiring credit).

~~(Q)~~

(R) The credit allowed by Section 23649 (relating to qualified property).

(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

suceeding 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 that has been repealed or made inoperative shall continue to be allowed to be carried over under the provisions of that section as it read immediately prior to being repealed or becoming inoperative.

(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.

(h) Unless otherwise provided, in the case of an S corporation, any credit allowed by this part shall be computed at the S corporation level, and any limitation on the expenses qualifying for the credit or limitation upon the amount of the credit shall be applied to the S corporation and to each shareholder.

(i) (1) With respect to any taxpayer that directly or indirectly owns an interest in a business entity that is disregarded for tax purposes pursuant to Section 23038 and any regulations thereunder, the amount of any credit or credit carryforward allowable for any income year attributable to the disregarded business entity shall be limited in accordance with paragraphs (2) and (3).

(2) The amount of any credit otherwise allowed under this part, including any credit carryover from prior years, that may be applied to reduce the taxpayer's "tax," as defined in subdivision (a), for the income year shall be limited to an amount equal to the excess of the taxpayer's regular tax (as defined in Section 23455), determined by including income attributable to the disregarded business entity that generated the credit or credit carryover, over the taxpayer's regular tax (as defined in Section 23455), determined by excluding the income attributable to that disregarded business entity. No credit shall be allowed if the taxpayer's regular tax (as defined in Section 23455), determined by including the income attributable to the disregarded business entity is less than the taxpayer's regular tax (as defined in Section 23455), determined by excluding the income attributable to the disregarded business entity.

(3) If the amount of a credit allowed pursuant to the section establishing the credit exceeds the amount allowable under this subdivision in any income year, the excess amount may be carried over to subsequent income years pursuant to subdivisions (d), (e), and (f).

SEC. 6. Section 23630 is added to the Revenue and Taxation Code, to read:

23630. (a) For each income year beginning on or after January 1, 1999, there shall be allowed as a credit against the amount of "tax," as defined in Section 23036, an amount equal to the tax credit awarded pursuant to Part 10 (commencing with Section 44475.1) of Division 26 of the Health and Safety Code.

(b) The aggregate amount of tax credits granted to all taxpayers pursuant to this section and Section 17052 may not exceed two hundred eighteen million dollars ($218,000,000) for each fiscal year, plus the amount of tax credits that are retained pursuant to paragraph (2) of subdivision (a) of Section 44475.58 of the Health and Safety Code.

(c) 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 until the credit has been exhausted.

(d) The State Air Resources Board shall do all of the following:

(1) Certify that the taxpayer has been awarded the tax credit as specified in subdivision (a).

(2) Issue tax credit certificates in an aggregate amount that shall not exceed the limit specified in subdivision (b).

(3) Furnish each year a list to the Franchise Tax Board, in a form or manner agreed upon by the Franchise Tax Board and the State Air Resources Board, of the qualified taxpayers that were issued tax credit certificates. If possible, the list shall be in a computer readable form.

(4) Provide the taxpayer with copies of the tax credit certificate.

(5) Obtain the taxpayer's identification number; or, in the case of an organization taxed as a partnership, the taxpayer's identification number of each partner; or, in the case of a Subchapter S corporation, the taxpayer's identification number of each shareholder.

(6) No later than 60 days following the close of each fiscal year within which the credit under this section is available, provide to the Legislature a report with respect to that fiscal year that includes all of the following:

(A) The number of tax credit certificates requested and issued.

(B) The types of businesses receiving the tax credit certificates.

(e) To be eligible for the tax credit, the taxpayer shall do all of the following:

(1) As part of the taxpayer's request for a tax credit, provide the State Air Resources Board with documents, as deemed necessary by the State Air Resources Board, verifying that the requirements of this section and Part 10 (commencing with Section 44475.1) of Division 26 of the Health and Safety Code have been met.

(2) Retain a copy of the tax credit certificate issued by the State Air Resources Board as specified in subdivision (d).

(3) Provide a copy of the tax credit certificate to the Franchise Tax Board upon request.

(4) Provide the State Air Resources Board with the taxpayer's identification number; or, in the case of an organization taxed as a partnership, the taxpayer identification numbers of all partners; or, in the case of a Subchapter S corporation, the taxpayer's identification number of each shareholder.

(5) If the taxpayer fails to comply with the requirements of this subdivision, no credit may be awarded to that taxpayer until the taxpayer complies.

(f) Any credit allowed pursuant to this section shall be in lieu of any other credit otherwise allowable pursuant to this part for the same purchase, retrofit, repower, or operational change that is the basis for the tax credit under this section. In addition, any deduction for the same purchase, retrofit, repower, or operational change that is the basis for the tax credit under this section shall be reduced, on a pro rata basis, by the part of the purchase, retrofit, repower, or operational change that was paid for by the credit awarded pursuant to this section.

(g) Notwithstanding any other provision of law, any tax credit awarded pursuant to this section may be used by any member of the taxpayer's unitary group.

SEC. 7. Section 42314.6 is added to the Health and Safety Code, to read:

42314.6. (a) Wildfires in California forests and wildlands release substantial emissions into the air. These emissions currently average almost 600,000 tons of pollutants annually. These emissions adversely affect public health and environmental quality. Emissions from wildfires not only adversely

affect air quality in areas where they occur but also are transported to other air basins.

(b) A study of an air quality market-based incentive program for prescribed burning projects is hereby authorized, and shall be paid for by an allocation of funds by the State Air Resources Board pursuant to Section 44475.14. The study shall consider policies, regulations, or standards which could be incorporated into air pollution control requirements that allow the sale, purchase, trade, or substitution of emissions reduction credits among sources of air pollution. As used in this section, "emissions reduction credits" means surplus emissions reductions that represent a net decrease in emissions from the level that otherwise would have been required by federal, state, or local pollution control requirements.

(c) The State Air Resources Board and the affected districts shall conduct the study to assess the feasibility of the program. The study shall be completed by January 1, 2001, and shall include the following:

(1) A methodology for establishing baselines for emissions from wildfire and from prescribed burning projects.

(2) The assessment and development of a methodology for calculating the emissions from prescribed burning projects to reduce anticipated emissions expected to occur from wildfires once the baselines are established.

(3) An assessment of emissions reduction techniques that can be applied to prescribed burning projects, and a methodology for calculating expected emissions reductions, including smoke management techniques that have the greatest potential to limit population exposure to smoke.

(d) The study shall consider the possibility of implementing the program on lands owned by, or where fire is managed by, the California Department of Forestry and Fire Protection, California Department of Fish and Game, the United States Forest Service, the United States Bureau of Land Management, the National Park Service, and the United States Fish and Wildlife Service.

(e) The study shall assume that the following requirements will be met by eligible projects:

(1) The project complies with federal, state, and district air pollution control requirements governing agricultural or nonagricultural burning.

(2) The project will result in cost-effective emissions reductions that satisfy federal and state market-based air pollution control requirements.

(3) The project will result in a net emissions reduction or air quality benefit when used to offset increased emissions from other sources.

(4) The purpose of the project is not to improve forest health, or to convert one ecosystem or habitat type to another ecosystem or habitat type.

(5) The project will meet any additional requirements that, as determined by the State Air Resources Board, will be necessary for this program to meet applicable state and federal requirements governing market-based incentive programs and emissions trading, including the development of technical calculation protocols and procedures that are specific to quantifying the emissions reduction benefits from prescribed burning projects. In estimating the potential emissions value of the credit, the study shall apply modeling data and actual or historic emissions data provided by the Department of Forestry and Fire Protection and approved by the State Air Resources Board.

(f) Because of the transportability of air pollutants generated by wildfires, the study shall consider whether emissions reduction credits for prescribed burning projects within any air basin could be used for offsets, and at what ratio

for nonattainment pollutants if within the same air basin, and at what ratio if between adjacent air basins if the State Air Resources Board determines that the upwind area contributes measurably to downwind area emissions.

(g) This section does not authorize any transaction involving emissions reduction credits, nor does it affect the application of existing law authorizing credits for reduced open field burning.

SEC. 8. Article 4 (commencing with Section 4495) is added to Chapter 7 of Part 2 of Division 4 of the Public Resources Code, to read:

Article 4. Prescribed Burning Projects: Air Pollution Reduction

4495. (a) All money recovered pursuant to Section 13009 of the Health and Safety Code for fire suppression costs and received in the fiscal year following the fiscal year in which the costs were incurred or in a subsequent fiscal year, all money recovered in the foreclosure of any lien for the abatement of fire and other hazards and nuisances pursuant to Article 7 (commencing with Section 4170) of Chapter 1, and any other money recovered, forfeited, or otherwise obtained pursuant to statute or any legal action to offset costs incurred in fire suppression shall be expended by the department to implement the prescribed burning elements of the California Fire Plan, as adopted by the State Board of Forestry, that reduce air pollution caused by wildland fires, forest fires, uncontrolled fires, and other wildfires. This subdivision does not apply to any money paid or credited to the department by another public agency in connection with the suppression of fire or the discharge of the department's responsibilities for fire prevention and fire hazard abatement.

(b) All money described in subdivision (a) shall be deposited in the Prefire Management Account, which is hereby created in the General Fund. Notwithstanding Section 13340 of the Government Code, all money in the account is hereby appropriated to the department without regard to fiscal years for expenditure for the purposes of this section.

(c) The department shall give preference to community conservation corps, as defined in Section 14507.5, in undertaking work financed pursuant to this section.

(d) Funds appropriated pursuant to this section shall be supplemental to other funds appropriated by the Legislature or obtained from other sources to implement the California Fire Plan, and may not displace those funds.

(e) Funds expended pursuant to this section may be spent only on the implementation of prescribed burns that are designed to reduce the generation of air pollution resulting from wildfires.

SEC. 9. Section 41202 of the Education Code is amended to read:

41202. The words and phrases set forth in subdivision (b) of Section 8 of Article XVI of the Constitution of the State of California shall have the following meanings:

(a) "Moneys to be applied by the State," as used in subdivision (b) of Section 8 of Article XVI of the California Constitution, means appropriations from the General Fund that are made for allocation to school districts, as defined, or community college districts. An appropriation that is withheld, impounded, or made without provisions for its allocation to school districts or community college districts, shall not be considered to be "moneys to be applied by the State."

(b) "General Fund revenues which may be appropriated pursuant to Article XIII B," as used in paragraph (1) of subdivision (b) of Section 8 of Article XVI, means General Fund revenues that are the proceeds of taxes as defined

by subdivision (c) of Section 8 of Article XIII B of the California Constitution, including, for the 1986–87 fiscal year only, any revenues that are determined to be in excess of the appropriations limit established pursuant to Article XIII B for the fiscal year in which they are received. General Fund revenues for a fiscal year to which paragraph (1) of subdivision (b) is being applied shall include, in that computation, only General Fund revenues for that fiscal year that are the proceeds of taxes, as defined in subdivision (c) of Section 8 of Article XIII B of the California Constitution, and shall not include prior fiscal year revenues. Commencing with the 1995–96 fiscal year, and each fiscal year thereafter, "General Fund revenues that are the proceeds of taxes," as defined in subdivision (c) of Section 8 of Article XIII B of the California Constitution, includes any portion of the proceeds of taxes received from the state sales tax that are transferred to the counties pursuant to, and only if, legislation is enacted during the 1995–96 fiscal year the purpose of which is to realign children's programs. The amount of the proceeds of taxes shall be computed for any fiscal year in a manner consistent with the manner in which the amount of the proceeds of taxes was computed by the Department of Finance for purposes of the Governor's Budget for the Budget Act of 1986.

(c) *"General Fund revenues which may be appropriated pursuant to Article XIII B," as used in paragraph (1) of subdivision (b) of Section 8 of Article XVI, includes tax credits approved pursuant to the California Air Quality Improvement Program, as set forth in Part 10 (commencing with Section 44475.1) of Division 26 of the Health and Safety Code, and in calculating moneys to be applied by the state for the support of school districts and community college districts. Notwithstanding any other provision of law, those tax credits shall be added to General Fund revenues otherwise considered in making these calculations as required by Section 8.*

(d) "General Fund revenues appropriated for school districts," as used in paragraph (1) of subdivision (b) of Section 8 of Article XVI of the California Constitution, means the sum of appropriations made that are for allocation to school districts, as defined in Section 41302.5, regardless of whether those appropriations were made from the General Fund to the Superintendent of Public Instruction, to the Controller, or to any other fund or state agency for the purpose of allocation to school districts. The full amount of any appropriation shall be included in the calculation of the percentage required by paragraph (1) of subdivision (b) of *Section 8 of* Article XVI, without regard to any unexpended balance of any appropriation. Any reappropriation of funds appropriated in any prior year shall not be included in the sum of appropriations.

~~(d)~~

(e) "General Fund revenues appropriated for community college districts," as used in paragraph (1) of subdivision (b) of Section 8 of Article XVI of the California Constitution, means one sum of appropriations made that are for allocation to community college districts, regardless of whether those appropriations were made from the General Fund to the Controller, to the Chancellor of the California Community Colleges, or to any other fund or state agency for the purpose of allocation to community college districts. The full amount of any appropriation shall be included in the calculation of the percentage required by paragraph (1) of subdivision (b) of *Section 8 of* Article XVI, without regard to any unexpended balance of any appropriation. Any reappropriation of funds appropriated in any prior year shall not be included in the sum of appropriations.

~~(e)~~

(f) "Total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as used in paragraph (2) or (3) of subdivision (b) of Section 8 of Article XVI of the California Constitution, means the sum of appropriations made that are for allocation to school districts, as defined in Section 41302.5, and community college districts, regardless of whether those appropriations were made from the General Fund to the Controller, to the Superintendent of Public Instruction, to the Chancellor of the California Community Colleges, or to any other fund or state agency for the purpose of allocation to school districts and community college districts. The full amount of any appropriation shall be included in the calculation of the percentage required by paragraph (2) or (3) of subdivision (b) of Section 8 of Article XVI, without regard to any unexpended balance of any appropriation. Any reappropriation of funds appropriated in any prior year shall not be included in the sum of appropriations.

~~(f)~~

(g) "General Fund revenues appropriated for school districts and community college districts, respectively" and "moneys to be applied by the state for the support of school districts and community college districts," as used in Section 8 of Article XVI of the California Constitution, shall include funds appropriated for the Child Care and Development Services Act pursuant to Chapter 2 (commencing with Section 8200) of Part 6 and shall not include any of the following:

(1) Any appropriation that is not made for allocation to a school district, as defined in Section 41302.5, or to a community college district regardless of whether the appropriation is made for any purpose that may be considered to be for the benefit to a school district, as defined in Section 41302.5, or a community college district. This paragraph shall not be construed to exclude any funding appropriated for the Child Care and Development Services Act pursuant to Chapter 2 (commencing with Section 8200) of Part 6.

(2) Any appropriation made to the Teachers' Retirement Fund or to the Public Employees' Retirement Fund except those appropriations for reimbursable state mandates imposed on or before January 1, 1988.

(3) Any appropriation made to service any public debt approved by the voters of this state.

~~(g)~~

(h) "Allocated local proceeds of taxes," as used in paragraph (2) or (3) of subdivision (b) of Section 8 of Article XVI of the California Constitution, means, for school districts as defined, those local revenues, except revenues identified pursuant to paragraph (5) of subdivision (h) of Section 42238, that are used to offset state aid for school districts in calculations performed pursuant to Sections 2558, 42238, and Chapter 7.2 (commencing with Section 56836) of Part 30.

~~(h)~~

(i) "Allocated local proceeds of taxes," as used in paragraph (2) or (3) of subdivision (b) of Section 8 of Article XVI of the California Constitution, means, for community college districts, those local revenues that are used to offset state aid for community college districts in calculations performed pursuant to Section 84700. In no event shall the revenues or receipts derived from student fees be considered "allocated local proceeds of taxes."

~~(i)~~

(j) For the purposes of calculating the 4 percent entitlement pursuant to subdivision (a) of Section 8.5 of Article XVI of the California Constitution, "the

total amount required pursuant to Section 8(b)" shall mean the General Fund aid required for schools pursuant to subdivision (b) of Section 8 of Article XVI of the California Constitution, and shall not include allocated local proceeds of taxes.

(k) The Legislature may not amend subdivision (c) except to better achieve the intent of that subdivision, which is to assure that the initiative measure that added that subdivision does not diminish funding for school districts and community college districts to a funding level below that required absent the tax credits authorized by that measure.

SEC. 10. Section 41204.2 is added to the Education Code, to read:

41204.2. Notwithstanding any other provision of law, for the purposes of applying paragraph (2) of subdivision (b) of Section 8 of Article XVI of the California Constitution, in the first fiscal year following approval of tax credits pursuant to the California Air Quality Improvement Program authorized by Part 10 (commencing with Section 44475.1) of Division 26 of the Health and Safety Code, and for each fiscal year thereafter, the Director of Finance shall adjust the amount required to ensure that allocations to school districts and community college districts, respectively, are not less than those allocations in the prior fiscal year, to reflect revenue derived from approval of tax credits in that fiscal year pursuant to Part 10 (commencing with Section 44475.1) of Division 26 of the Health and Safety Code, and to ensure that the proportional net fiscal effect reflects the allocation of such revenue to school districts and community college districts consistent with the manner in which the amount of the proceeds of taxes was computed by the Department of Finance for purposes of the Governor's Budget in the immediately preceding fiscal year.

The Legislature may amend this section to better achieve its intent, which is to assure that the initiative measure that enacted this section does not diminish funding for school districts and community college districts to a funding level below that required absent the tax credits authorized by that measure.

SEC. 11. Section 29531 of the Government Code is amended to read:

29531. (a) The board of supervisors shall continuously appropriate the money in ~~such~~ *the local transportation* fund for expenditure for the purposes specified in this article *directly related to administration of the fund and the fund's revenue* and *the transportation and associated fund administration purposes specified* in Chapter 4 (commencing with Section 99200) of Part 11 of Division 10 of the Public Utilities Code.

(b) The local transportation fund is a trust fund. Once the local transportation fund is created, it may not be abolished. The terms of the contract entered into pursuant to Section 29530 may not be modified in a manner inconsistent with the purposes and requirements of this section. Money in the fund or designated for transfer to the fund pursuant to Section 29530 may be allocated only to mass transportation, pedestrian and bicycle facilities, streets and roads, transportation planning, and fund administration purposes, as required by this article and by Chapter 4 (commencing with Section 99200) of Part 11 of Division 10 of the Public Utilities Code. Neither the county nor the Legislature may divert any moneys in the fund from these purposes to another purpose.

SEC. 12. (a) Prior to January 1, 2011, the Legislature may amend Sections 17039 and 23036 of the Revenue and Taxation Code if the amendments do not delete or alter the tax credits authorized by Sections 17052 and 23630 of the Revenue and Taxation Code. Prior to January 1, 2011, except where specifically

authorized pursuant to this act, the Legislature may make no other amendments to this act and may not repeal or supersede any provision of this act.

(b) On and after January 1, 2011, the Legislature may amend or repeal any provision of this act if the amendments do not reduce or impair the ability of taxpayers to fully utilize tax credits after January 1, 2011, if the tax credits were awarded prior to January 1, 2011, and the taxpayers are eligible to use the carryover provisions of the Revenue and Taxation Code or use the tax credits pursuant to long-term contracts that meet the requirements of Section 44475.10 of the Health and Safety Code.

SEC. 13. It is the intent of the People of California in enacting this act that the operation of this act not reduce funding for school districts or community college districts.

SEC. 14. This act shall be liberally construed to further its purposes, especially with respect to being allowed to take effect.

SEC. 15. (a) This act shall take effect notwithstanding any other provision of law.

(b) It is the express intent of the People of California that this act shall take effect and become operative at 12:01 a.m. on November 4, 1998.

SEC. 16. If any provision of this act or the application thereof is held invalid, that invalidity does 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. 17. It is the intent of the People of California in enacting this act that it be carried out in the most expeditious manner possible, and that all state and local officials implement this act to the fullest extent of their authority.

Number on ballot

8. **Public Schools. Permanent Class Size Reduction. Parent-Teacher Councils. Teacher Credentialing. Pupil Suspension for Drug Possession. Chief Inspector's Office.**

[Submitted by the initiative and rejected by electors November 3, 1998.]

PROPOSED LAW

SECTION 1. This act shall be known, and may be cited, as the Permanent Class Size Reduction and Educational Opportunities Act of 1998.

SEC. 2. (a) The people of the State of California find and declare all of the following:

(1) High expectations for the academic achievement of all children in California are essential elements of the public school system.

(2) Small class sizes, well-trained teachers, a safe learning environment, and parent participation in the public schools are essential components of an educational system that achieves our high expectations for all children.

(3) Information on the quality of education in each public school is essential to identify low-performing schools that are not providing our children with the opportunity to achieve our high expectations.

(b) In enacting the Permanent Class Size Reduction and Educational Opportunities Act of 1998, it is the intent of the people of the State of California to accomplish all of the following:

(1) To give parents a significant role in improving the educational program at the schools attended by their children.

(2) To ensure that persons licensed to teach in California possess essential subject-matter knowledge.

(3) To enable school principals to identify, assist, and, if necessary, remove from their schools, teachers who are not contributing to pupil achievement.

(4) To provide a safe learning environment that fosters learning by keeping mind-altering illegal drugs out of the hands of school children.

(5) To provide a funding guarantee for class size reduction for kindergarten and grades 1 to 3, inclusive.

(6) To provide information to parents, the general public, and elected officials on the performance of individual public schools so that corrective action may be taken in low-performing schools.

SEC. 3. Chapter 2.5 (commencing with Section 33250) is added to Part 20 of the Education Code, to read:

CHAPTER 2.5. OFFICE OF THE CHIEF INSPECTOR OF THE PUBLIC SCHOOLS

33250. The Office of the Chief Inspector of the Public Schools is hereby established in the state government.

33250.5. The Office of the Chief Inspector of the Public Schools shall be an independent entity in the state government. The Chief Inspector of the Public Schools shall appoint and discharge employees, consistent with applicable civil service laws, and shall establish the compensation of these employees and prescribe their duties.

33251. The Chief Inspector of the Public Schools shall be appointed by the Governor and shall serve for no more than one term of 10 years. The appointment of the Chief Inspector of the Public Schools shall not be subject to approval by the Senate, but the Chief Inspector of the Public Schools may be removed from that office by a two-thirds vote of all members elected to each house of the Legislature.

33251.5. The Chief Inspector of the Public Schools, or employees of the Office of the Chief Inspector of the Public Schools, acting at the direction of the chief inspector, shall inspect each of the public elementary and secondary schools in California at least once every two years. The Chief Inspector of the Public Schools shall submit an annual report on his or her findings to the Governor, the Legislature, the State Board of Education, and the Superintendent of Public Instruction.

33252. The annual report of the Chief Inspector of the Public Schools shall include, but not necessarily be limited to, all of the following:

(a) A ranking of the public schools in categories of comparable grade levels in order of the quality of education offered by the schools.

(b) Identification of the strengths and weaknesses of each public school.

(c) Achievement scores, dropout rates, attendance rates, college entrance rates, vocational program entrance rates, scores on the SAT and other standardized tests, and other information as determined by the chief inspector.

33252.5. Funding for the Office of the Chief Inspector of the Public Schools shall be provided in the annual Budget Act. However, the annual Budget Act appropriation for support of the State Department of Education shall be reduced by an amount equal to the annual Budget Act appropriation for the Office of the Chief Inspector of the Public Schools.

33253. This chapter shall become operative on July 1, 1999.

SEC. 4. Section 44252.9 is added to the Education Code, to read:

44252.9. (a) The commission may issue a preliminary multiple subject or single subject teaching credential, for a period not to exceed two years, to any applicant qualifying under Section 44227 pending completion of the following requirements in paragraph (1), (2), or (3), or to any applicant for a designated subjects teaching credential pending completion of the requirement in paragraph (3):

(1) A commission-approved examination to verify subject matter competence.

(2) A course or examination on the teaching of reading.

(3) A course or examination on the provisions and principles of the United States Constitution.

(b) This section shall apply to credentials issued on or after January 1, 1999.

SEC. 5. Section 44253 of the Education Code is amended to read:

44253. *(a)* The commission may issue a preliminary multiple *subject* or single subject teaching credential, for a period not to exceed two years, to any applicant qualifying under Section 44227 pending completion of the *following* requirements in ~~subdivision (a), (b), or (c)~~ *paragraph (1), (2), or (3)*, or to any applicant for a designated subjects teaching credential pending completion of the requirement in ~~subdivision (c).~~

~~(a)~~ *paragraph (3):*

(1) A commission-approved subject matter preparation program or examination to verify subject matter competence.

~~(b)~~

(2) A course or examination on the teaching of reading.

~~(c)~~

(3) A course or examination on the provisions and principles of the United States Constitution.

(b) This section shall apply to credentials issued on or before December 31, 1998. Credentials issued after that date shall be subject to Section 44252.9.

SEC. 6. Section 44256 of the Education Code is amended to read:

44256. Authorization for teaching credentials shall be of four basic kinds, as defined below:

(a) "Single subject instruction" means the practice of assignment of teachers and students to specified subject matter courses, as is commonly practiced in California high schools and most California junior high schools. The holder of a single subject teaching credential or a standard secondary credential or a special secondary teaching credential, as defined in this subdivision, who has completed 20 semester hours of coursework or 10 semester hours of upper division or graduate coursework approved by the commission at an accredited institution in any subject commonly taught in grades 7 to 12, inclusive, other than the subject for which he or she is already certificated to teach, shall be eligible to have this subject appear on the credential as an authorization to teach this subject. The commission, by regulation, may require that evidence of additional competence is a condition for instruction in particular subjects, including, but not limited to, foreign languages. The commission may establish and implement alternative requirements for additional authorizations to the single subject credential on the basis of specialized needs. For purposes of this subdivision, a special secondary teaching credential means a special secondary teaching credential issued on the basis of at least a baccalaureate degree, a student teaching requirement, and 24 semester units of coursework in the subject specialty of the credential.

(b) *(1)* "Multiple subject instruction" means the practice of assignment of teachers and students for multiple subject matter instruction, as is commonly practiced in California elementary schools and as is commonly practiced in early childhood education.

(2) The holder of a multiple subject teaching credential or a standard elementary credential who has completed 20 semester hours of coursework or 10 semester hours of upper division or graduate coursework approved by the commission at an accredited institution in any subject commonly taught in grades 9 and below shall be eligible to have that subject appear on the credential as authorization to teach the subject in departmentalized classes in grades 9 and below. The governing board of a school district by resolution may authorize the holder of a multiple subject teaching credential or a standard elementary credential to teach any subject in departmentalized classes to a given class or group of students below grade 9, provided that the teacher has completed at least 12 semester units, or ~~six~~ *6* upper division or graduate units, of coursework at an accredited institution in each subject to be taught. The authorization shall be with the teacher's consent. However, the commission, by regulation, may provide that evidence of additional competence is necessary for instruction in particular subjects, including, but not limited to, foreign languages. The commission may establish and implement alternative requirements for additional authorizations to the multiple subject credential on the basis of specialized needs.

(c) "Specialist instruction" means any specialty requiring advanced preparation or special competence including, but not limited to, reading specialist, mathematics specialist, specialist in special education, or early childhood education, and such other specialties as the commission may determine.

(d) "Designated subjects" means the practice of assignment of teachers and students to designated technical, trade, or vocational courses which courses may be part of a program of trade, technical, or vocational education.

(e) This section shall apply to authorizations issued on or before December 31, 1998. Authorizations issued after that date shall be subject to Section 44256.1.

SEC. 7. Section 44256.1 is added to the Education Code, to read:

44256.1. Authorization for teaching credentials shall be of four basic kinds, as defined below:

(a) "Single subject instruction" means the practice of assignment of teachers and students to specified subject matter courses, as is commonly practiced in California high schools and most California junior high schools.

(b) "Multiple subject instruction" means the practice of assignment of teachers and students for multiple subject matter instruction, as is commonly practiced in California elementary schools and as is commonly practiced in early childhood education.

(c) "Specialist instruction" means any specialty requiring advanced preparation or special competence including, but not limited to, reading specialist, mathematics specialist, specialist in special education, or early childhood education, and such other specialties as the commission may determine.

(d) "Designated subjects" means the practice of assignment of teachers and students to designated technical, trade, or vocational courses which courses may be part of a program of trade, technical, or vocational education.

(e) This section shall apply to authorizations issued on or after January 1, 1999.

SEC. 8. Section 44258.3 of the Education Code is amended to read:

44258.3. (a) The governing board of a school district may assign the holder of a credential, other than an emergency permit, to teach any subjects in departmentalized classes in kindergarten or any of grades 1 to 12, inclusive, provided that the governing board verifies, prior to making the assignment, that the teacher has adequate knowledge of each subject to be taught and the teacher consents to that assignment. The governing board shall adopt policies and procedures for the purpose of verifying the adequacy of subject knowledge on the part of each of those teachers. The governing board shall involve subject matter specialists in the subjects commonly taught in the district in the development and implementation of the policies and procedures, and shall include in those policies and procedures both of the following:

(1) One or more of the following ways to assess subject matter competence:

(A) Observation by subject matter specialists, as defined in subdivision (d).

(B) Oral interviews.

(C) Demonstration lessons.

(D) Presentation of curricular portfolios.

(E) Written examinations.

(2) Specific criteria and standards for verifying adequacy of subject matter knowledge using any of the methods in paragraph (1). The criteria shall include, but need not be limited to, evidence of the candidate's knowledge of the subject matter to be taught, including demonstrated knowledge of the curriculum framework for the subject to be taught and the specific content of the course of study in the school district for the subject, at the grade level to be taught.

(b) Teaching assignments made pursuant to this section shall be valid only in that school district. The principal of the school, or other appropriate administrator, shall notify the exclusive representative of the certificated employees for that school district, as provided under Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, of each instance in which a teacher is assigned to teach classes pursuant to this section. Any school district policy or procedures adopted and teaching assignments made pursuant to this section shall be included in the report required by subdivisions (a) and (e) of Section 44258.9. The Commission on Teacher Credentialing may suspend the authority of a school district to use the teaching assignment option authorized by this section upon a finding that the school district has violated the provisions of this section.

(c) Nothing in this section shall be construed to alter the effect of Section 44955 with regard to the reduction by a school district governing board of the number of certificated employees.

(d) For the purposes of this section, "subject matter specialists" are mentor teachers, curriculum specialists, resource teachers, classroom teachers certified to teach a subject, staff to regional subject matter projects or curriculum institutes, or college faculty.

(e) This section shall apply only to assignments made on or before December 31, 1998.

SEC. 9. Section 44259 of the Education Code is amended to read:

44259. (a) Each program of professional preparation for multiple *subject* or single subject teaching credentials shall not include more than one year of, or the equivalent of one-fifth of a five-year program in, professional preparation.

(b) The minimum requirements for the preliminary multiple *subject* or single subject teaching credential, are all of the following:

(1) A baccalaureate degree or higher degree, except in professional education, from a regionally accredited institution of postsecondary education.

(2) Passage of the state basic skills examination that is developed and administered by the commission pursuant to Section 44252.5.

(3) Completion of a program of not more than one year of professional preparation that has been approved or accredited on the basis of standards of program quality and effectiveness pursuant to subdivision (a) of Section 44227, subdivisions (a), (b), and (c) of Section 44372, or Section 44376.

(4) Study of alternative methods of developing English language skills, including the study of reading as described in subparagraphs (A) and (B), among all pupils, including those for whom English is a second language, in accordance with the commission's standards of program quality and effectiveness. The study of reading shall meet the following requirements:

(A) Commencing January 1, 1997, satisfactory completion of comprehensive reading instruction that is research-based and includes all of the following:

(i) The study of organized, systematic, explicit skills including phonemic awareness, direct, systematic, explicit phonics, and decoding skills.

(ii) A strong literature, language, and comprehension component with a balance of oral and written language.

(iii) Ongoing diagnostic techniques that inform teaching and assessment.

(iv) Early intervention techniques.

(v) Guided practice in a clinical setting.

(B) *(i)* For the purposes of this section, "direct, systematic, explicit phonics" means phonemic awareness, spelling patterns, the direct instruction of sound/symbol codes and practice in connected text, and the relationship of direct, systematic, explicit phonics to the components set forth in clauses (i) to (v), inclusive.

(ii) A program for the multiple ~~subjects~~ *subject* credential also shall include 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~~ *Commencing January 1, 1999,* 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 *United States* Constitution ~~of the United States~~ pursuant to Section 44335.

(7) Commencing January 1, 2000, demonstration, in accordance with the commission's standards of program quality and effectiveness, of basic competency in the use of computers in the classroom.

(c) The minimum requirements for the professional multiple *subject* or single subject teaching credential shall include completion of the following studies:

(1) Study of health education, including study of nutrition, cardiopulmonary resuscitation, and the physiological and sociological effects of abuse of alcohol, narcotics, and drugs and the use of tobacco. Training in cardiopulmonary resuscitation shall also meet the standards established by the American Heart Association or the American Red Cross.

(2) Study and field experience in methods of delivering appropriate educational services to students with exceptional needs in regular education programs.

(3) Study, in accordance with the commission's standards of program quality and effectiveness, of advanced computer-based technology, including the uses of technology in educational settings.

(4) Completion of an approved fifth year program after completion of a baccalaureate degree at an accredited institution.

(d) A credential that was issued prior to the effective date of this section shall remain in force as long as it is valid under the laws and regulations that were in effect on the date it was issued. The commission may not, by regulation, invalidate an otherwise valid credential unless it issues to the holder of the credential, in substitution, a new credential authorized by another provision in this chapter that is no less restrictive than the credential for which it was substituted with respect to the kind of service authorized and the grades, classes, or types of schools in which it authorizes service.

(e) Notwithstanding this section, persons who were performing teaching services as of January 1, 1991, pursuant to the language of this section that was in effect prior to that date, may continue to perform those services without complying with any requirements that may be added by the amendments adding this subdivision.

(f) Subparagraphs (A) and (B) of paragraph (4) of subdivision (b) do not apply to any person who, as of January 1, 1997, holds a multiple *subject* or single subject teaching credential, or to any person enrolled in a program of professional preparation for a multiple *subject* or single subject teaching credential as of January 1, 1997, who subsequently completes that program. It is the intent of the Legislature that the requirements of subparagraphs (A) and (B) of paragraph (4) of subdivision (b) be applied only to persons who enter a program of professional preparation on or after January 1, 1997.

SEC. 10. Section 44280 of the Education Code is amended to read:

44280. ~~The~~ *Commencing January 1, 1999, the* adequacy of subject matter preparation and the basis for assignment of certified personnel shall be determined by the ~~successful~~ *following:*

(a) Successful passage of a subject matter examination as certified by the commission~~, except as specifically waived as set forth in Article 6 (commencing with Section 44310) of this chapter~~. For the purpose of determining the adequacy of subject matter knowledge of languages for which there are no adequate examinations, the commission may establish guidelines for accepting assessments performed by organizations that are expert in the language and culture assessed.

(b) Submission of a portfolio of lesson plans in the subject areas to be taught. These lesson plans shall meet standards for lesson plans in the California public schools. These standards shall be developed and adopted by the commission.

SEC. 11. Article 6 (commencing with Section 44310) of Chapter 2 of Part 25 of the Education Code is repealed.

SEC. 12. Section 48915 of the Education Code is amended to read:

48915. (a) Except as provided in subdivisions (c) and (e), the principal or the superintendent of schools shall recommend the expulsion of a pupil for any of the following acts committed at school or at a school activity off school grounds, unless the principal or superintendent finds that expulsion is inappropriate, due to the particular circumstance:

(1) Causing serious physical injury to another person, except in self-defense.

(2) Possession of any knife, explosive, or other dangerous object of no reasonable use to the pupil.

(3) ~~Unlawful possession of any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, except for the first offense for the possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis.~~

~~(4)~~ Robbery or extortion.

~~(5)~~

(4) Assault or battery, as defined in Sections 240 and 242 of the Penal Code, upon any school employee.

(b) Upon recommendation by the principal, superintendent of schools, or by a hearing officer or administrative panel appointed pursuant to subdivision (d) of Section 48918, the governing board may order a pupil expelled upon finding that the pupil committed an act listed in subdivision (a) or in subdivision (a), (b), (c), (d), or (e) of Section 48900. A decision to expel shall be based on a finding of one or both of the following:

(1) Other means of correction are not feasible or have repeatedly failed to bring about proper conduct.

(2) Due to the nature of the act, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.

(c) The principal or superintendent of schools shall immediately suspend, pursuant to Section 48911, and shall recommend expulsion of, a pupil that he or she determines has committed any of the following acts at school or at a school activity off school grounds:

(1) Possessing, selling, or otherwise furnishing a firearm. This subdivision does not apply to an act of possessing a firearm if the pupil had obtained prior written permission to possess the firearm from a certificated school employee, which is concurred in by the principal or the designee of the principal. This subdivision applies to an act of possessing a firearm only if the possession is verified by an employee of a school district.

(2) Brandishing a knife at another person.

(3) Unlawfully selling a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

(4) Committing or attempting to commit a sexual assault as defined in subdivision (n) of Section 48900 or committing a sexual battery as defined in subdivision (n) of Section 48900.

(5) Unlawful possession of any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, except for the first offense for the possession of not more than 28.5 grams of marijuana, other than concentrated cannabis.

(d) The governing board shall order a pupil expelled upon finding that the pupil committed an act listed in subdivision (c), and shall refer that pupil to a program of study that meets all of the following conditions:

(1) Is appropriately prepared to accommodate pupils who exhibit discipline problems.

(2) Is not provided at a comprehensive middle, junior, or senior high school, or at any elementary school.

(3) Is not housed at the schoolsite attended by the pupil at the time of suspension.

(e) Upon recommendation by the principal, superintendent of schools, or by a hearing officer or administrative panel appointed pursuant to subdivision (d)

of Section 48918, the governing board may order a pupil expelled upon finding that the pupil, at school or at a school activity off of school grounds, violated subdivision (f), (g), (h), (i), (j), (k), (*l*), or (m) of Section 48900, or Section 48900.2, 48900.3, or 48900.4, and either of the following:

(1) That other means of correction are not feasible or have repeatedly failed to bring about proper conduct.

(2) That due to the nature of the violation, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.

(f) The governing board shall refer a pupil who has been expelled pursuant to subdivision (b) or (e) to a program of study that meets all of the conditions specified in subdivision (d). Notwithstanding this subdivision, with respect to a pupil expelled pursuant to subdivision (e), if the county superintendent of schools certifies that an alternative program of study is not available at a site away from a comprehensive middle, junior, or senior high school, or an elementary school, and that the only option for placement is at another comprehensive middle, junior, or senior high school, or another elementary school, the pupil may be referred to a program of study that is provided at a comprehensive middle, junior, or senior high school, or at an elementary school.

(g) As used in this section, "knife" means any dirk, dagger, or other weapon with a fixed, sharpened blade fitted primarily for stabbing, a weapon with a blade fitted primarily for stabbing, a weapon with a blade longer than 3½ inches, a folding knife with a blade that locks into place, or a razor with an unguarded blade.

SEC. 13. Section 52126 of the Education Code is amended to read:

52126. The amount of funding that each school district implementing a Class Size Reduction Program pursuant to this chapter is eligible to receive shall be computed as follows:

(a) If a school district applies to participate in Option One, pursuant to subparagraph (A) of paragraph (2) of subdivision (b) of Section 52122, the Superintendent of Public Instruction shall apportion to the applicant school district an amount equal to eight hundred dollars ($800) for each pupil actually enrolled in the classes in which the school district implements the program, except that the maximum number of pupils for which a school district may claim funding for any class shall not exceed 20. The number of pupils claimed pursuant to this subdivision shall be pupils actually enrolled in classes participating in the Class Size Reduction Program and shall not be based on the average size of the classes for any grade levels for which funding is claimed.

(b) If a school district applies to participate in Option Two, pursuant to subparagraph (B) of paragraph (2) of subdivision (b) of Section 52122, the Superintendent of Public Instruction shall apportion to the applicant school district an amount equal to four hundred dollars ($400) per pupil actually enrolled in the classes in which the school district implements the program, except that the number of pupils in any class for which a school district may claim funding for the instructional minutes offered shall not exceed 20. The number of pupils claimed pursuant to this subdivision shall be pupils actually enrolled in classes participating in the Class Size Reduction Program and shall not be based on the average size of the classes for any grade levels for which funding is claimed.

(c) (1) If a school district applies to participate in Option One, pursuant to subparagraph (A) of paragraph (2) of subdivision (b) of Section 52122, the Superintendent of Public Instruction shall apportion to the applicant school

district an amount equal to six hundred fifty dollars ($650) for each pupil actually enrolled in the classes in which the school district implements the program and at least one of the following conditions exists:

(A) The requirements of subdivision (e) of Section 52122 have been satisfied, except for the requirements of either paragraph (1) or (2), of that subdivision, or both.

(B) The pupil enrolls in the school district after February 16, 1998.

(2) The maximum number of pupils for which a school district may claim funding for any class does not exceed 20. The number of pupils claimed pursuant to this subdivision shall be pupils actually enrolled in classes participating in the Class Size Reduction Program, and shall not be based on the average size of the classes for any grade levels for which funding is claimed.

(d) (1) If a school district applies to participate in Option 2, pursuant to subparagraph (B) of paragraph (2) of subdivision (b) of Section 52122, the Superintendent of Public Instruction shall apportion to the applicant district an amount equal to three hundred twenty-five dollars ($325) for each pupil actually enrolled in the classes in which the school district implements the program and at least one of the following conditions exists:

(A) The requirements of subdivision (e) of Section 52122 have been satisfied, except for the requirements of either paragraph (1) or (2) of that subdivision, or both.

(B) The pupil enrolls in the school district after February 16, 1998.

(2) The maximum number of pupils for which a school district may claim funding for any class shall not exceed 20. The number of pupils claimed pursuant to this subdivision shall be pupils actually enrolled in classes participating in the Class Size Reduction Program, and shall not be based on the average size of the classes for any grade levels for which funding is claimed.

(e) The per pupil amount set forth in subdivisions (a) and (b) shall be increased annually for inflation by the percentage change determined pursuant to subdivision (b) of Section 42238.1.

(f) Except for the advance apportionment, the Superintendent of Public Instruction shall apportion funds to a school district only after certification that its Class Size Reduction Program has been implemented for that fiscal year.

(g) The Superintendent of Public Instruction shall apportion funds for this program in the following manner:

(1) An advance apportionment shall be made following passage of the annual Budget Act. This apportionment shall be provided to all school districts that participated in the program in the prior fiscal year, and shall be limited to 25 percent of the amount computed by multiplying the appropriate per pupil stipends times the actual enrollment in each participating class in the prior fiscal year, as reported by the district pursuant to subdivision (d) of Section 52124.

(2) Each year an apportionment to all applicants shall be made following receipt of applications submitted pursuant to Section 52123, adjusted as necessary by the amount received pursuant to paragraph (1). If a school district that participated in this program in the prior fiscal year fails to submit an application, all funds apportioned to that school district pursuant to paragraph (1) shall be deducted from the district's next monthly principal apportionment payment.

(3) A final adjustment to the amounts paid pursuant to paragraph (2) shall be made following receipt of the actual enrollment in each participating class, to be reported by each school district pursuant to subdivision (d) of Section 52124.

(h) Irrespective of the amount that a school district receives pursuant to subdivision (a) on the basis of the application it makes under Section 52123, that district shall not retain any funds it receives for any class that does not actually meet all of the requirements of the Class Size Reduction Program.

~~(i) It is the intent of the Legislature that the total statewide amount computed for the purposes of this chapter pursuant to this section, commencing with the 1997–98 fiscal year, be appropriated to the Superintendent of Public Instruction in the annual Budget Act.~~

SEC. 14. Section 52129 is added to the Education Code, to read:

52129. (a) The Class Size Reduction Fund is hereby created in the State Treasury and, notwithstanding Section 13340 of the Government Code, is continuously appropriated to the State Department of Education. From any funds that are transferred to the Class Size Reduction Fund, the Superintendent of Public Instruction shall annually apportion to each school district the funds for which the school district is eligible pursuant to the Class Size Reduction Program under this chapter.

(b) It is the intent of the Legislature that the establishment of the Class Size Reduction Fund shall provide a guarantee that the funds necessary to pay the costs of class size reduction for all public school pupils in kindergarten and in grades 1 to 3, inclusive, shall be available.

(c) The Director of Finance shall annually calculate the amount necessary to fully fund the Class Size Reduction Program established pursuant to this chapter. The amount to be calculated pursuant to this subdivision shall be the product of the enrollment in kindergarten and in grades 1 to 3, inclusive, as projected by the Director of Finance and the Option One per-pupil amount. From the total funds allocated to school districts from the General Fund pursuant to subdivision (b) of Section 8 of Article XVI of the California Constitution, the Controller shall annually transfer to the Class Size Reduction Fund the amount calculated pursuant to this subdivision.

(d) The Director of Finance shall biennially determine if there are excess funds in the Class Size Reduction Fund. Upon certification by the Director of Finance, the Controller shall transfer any excess funds to the Proposition 98 Reversion Account.

SEC. 15. Chapter 14.5 (commencing with Section 52990) is added to Part 28 of the Education Code, to read:

CHAPTER 14.5. SCHOOLSITE GOVERNING COUNCILS AND TEACHER EVALUATION

52990. As a condition to receiving funds under any program established pursuant to this part or Part 29 (commencing with Section 54000), the governing board of each school district shall ensure that each school in that district establishes a schoolsite governing council that is composed as follows:

(a) The schoolsite governing council shall consist of representatives of classroom teachers selected by classroom teachers at the school and representatives of parents of pupils attending the school selected by the parents.

(b) At least two-thirds of the members of the schoolsite governing council shall be parents of pupils of that school.

(c) The term and procedures for selection and replacement of governing council members shall be specified in the schoolsite governing council's bylaws, which shall be developed in accordance with procedures adopted and promulgated by the governing board of the school district.

52990.5. (a) The schoolsite governing council, in consultation with the principal, shall make all decisions for the school with respect to the school's curricula and expenditure of funds allocated by the governing board to the school, and shall perform the duties prescribed in Section 52991.

(b) The school principal shall make the decisions regarding the employment at the school of all personnel and the removal from the school of all personnel pursuant to Section 52991.5. The school district shall be responsible for assigning personnel who have been removed from the school by the principal.

52991. The schoolsite governing council shall perform the following duties:

(a) Each member of the schoolsite council shall attend training sessions provided by the district or district designee.

(b) Gather and examine available data on the gains made by the pupils enrolled in the school towards meeting the standards of expected pupil achievement. The data shall provide separate information on the gains of pupils from families receiving free or reduced-price meals pursuant to Section 49512, gifted and talented pupils, special education pupils, and the gains of English learners toward meeting the standards of expected pupil achievement. Under no circumstances shall that data reveal the actual names of individual pupils.

(c) At the secondary school level, seek advice from representatives of local businesses and postsecondary institutions.

(d) Request assistance from the school district if it is determined that an unsatisfactory number of the pupils in the school fail to make significant gains towards meeting the standards of expected pupil achievement in any core academic subject for two consecutive years that the identified pupil has spent attending the school.

(e) For each school year, develop a new, or revise an existing, educational quality improvement plan that has been drafted by the certificated employees of the school, and approved by a majority of teachers of the school. The schoolsite governing council shall make modifications, if any, and approve the plan. The educational quality improvement plan shall be a comprehensive plan for the entire school. The plan shall describe the educational program of the school and shall include a specific plan for improving that program, including, but not necessarily limited to, all of the following:

(1) A proposed expenditure plan for funds allocated to the schoolsite.

(2) Preventive actions that will be taken to reduce the likelihood that any pupil will complete grades 4, 8, or 10 without making significant gains towards meeting the standards of expected pupil achievement, and preventive actions that will be taken to ensure that no pupil leaves grade 3 without basic proficiency in reading.

(3) Identification of the pupils completing grades 4, 8, and 10 who have not made significant gains towards meeting the standards of expected pupil achievement, the actions that will be taken to improve the performance of those pupils, and how those actions will be funded.

(4) Identification of pupils completing grade 2 who have not mastered basic reading, and actions that will be taken to assist these pupils to become proficient in reading.

(5) Staff development activities to improve beginning reading instruction, including phonemic awareness and systematically explicit phonics, and other staff development opportunities.

(6) Core curriculum areas in need of improvement at the school.

(7) Instructional strategies that will be used to meet the standards of expected pupil achievement.

(8) Strategies to increase involvement of parents in their child's education.

(9) Incorporation of a current, appropriate technology plan or the establishment of an appropriate technology plan.

52991.5. (a) Notwithstanding any other provision of law, the principal of a school shall be responsible for evaluation of the personnel who are employed at that school.

(b) Notwithstanding any other provision of law, a principal, as part of his or her evaluation of the performance of a certificated employee at the school, shall utilize the results of pupil performance on assessments administered pursuant to Article 4 (commencing with Section 60640) of Chapter 5 of Part 33 in the determination of the job performance of the employee.

52992. On or before February 1, 1999, the State Department of Education shall submit draft regulations for the implementation of this chapter to the State Board of Education for its approval. The State Board of Education shall submit regulations implementing this chapter to the Office of Administrative Law on or before May 1, 1999.

SEC. 16. If any part or parts of this act are found to be in conflict with federal law or with the Constitutions of the United States or California, this act shall be implemented to the maximum extent permitted by federal law and the Constitutions of the United States and California. Any provisions of this act held to be invalid shall be severed from the remaining provisions of this act, which shall be given full effect.

SEC. 17. Except where expressly provided otherwise, this act shall become operative for all school terms that commence at least 60 days after the effective date of this act.

SEC. 18. The provisions of this act may be amended by a statute that becomes effective upon approval by the electorate or by a statute to further the act's purpose that is passed by a four-fifths vote of each house of the Legislature and signed by the Governor.

Number on ballot

9. **Electric Utilities. Assessments. Bonds.**

[Submitted by the initiative and rejected by electors November 3, 1998.]

PROPOSED LAW

THE UTILITY RATE REDUCTION AND REFORM ACT

SECTION 1. Findings and Declarations.

The People of California find and declare as follows:

The cost and dependability of California's electric utility service are threatened by a new law that was intended to reduce regulation of electric utility companies in this state.

Any change in the way electricity is sold should benefit all electric utility customers, including residential and small business customers, and should result in a fair and competitive marketplace.

Instead of creating a fully competitive market for electricity, the new law unfairly favors existing electric utility monopolies by forcing customers to pay

rates more than 40 percent higher than the market price in order to bail out utilities for their past bad investments.

As a result of this $28 billion bailout for electric utility companies, the average California household will pay more than $250 more per year for electricity than it would in a fully competitive market.

Residential and small business customers should not be required to bear the costs of bonds used by utility companies to pay for past bad investments.

It is against public policy for residential and small business customers to be required to pay for the imprudent and uneconomic decisions of electric utility companies to invest in nuclear power plants that the public did not want and that threaten the health and safety of this state.

Under the new law, deregulation of electric utility companies may result in marketing abuses that harm residential and small business customers. Such abuses may include the selling of information about these customers to other companies for profit.

Therefore, the People of California declare that it is necessary to protect residential and small business customers from unfair and unjustified taxes and surcharges that will force them to subsidize electric utility companies. It is also necessary to ensure that residential and small business customers directly benefit from deregulation of electric utility companies.

SEC. 2. Purpose.

The purpose of this chapter is to:

1. Reduce residential and small commercial electricity rates by 20 percent to assure that these customers receive a direct benefit from the transition to the competitive marketplace for electricity.

2. Prohibit taxes, surcharges, bond payments, or any other assessment from being added to electricity bills to pay off utility companies' past bad investments in nuclear power plants and other generation-related costs.

3. Prohibit bonds from being used to force residential and small business customers to pay for past bad investments by electric utility companies.

4. Provide for fair and public review of California Public Utilities Commission decisions related to electricity price and services.

5. Protect the privacy of utility customers and provide the information consumers need to obtain low cost and high quality electric service.

SEC. 3. Section 368.1 is added to the Public Utilities Code, to read:

368.1. (a) No later than January 1, 1999, electricity rates for residential and small commercial customers shall be reduced so that these customers receive rate reductions of at least 20 percent on their total electricity bill as compared to the rate schedules in effect for these customers on June 10, 1996.

(b) The rate reductions described in subdivision (a) shall be achieved through cutting payments to electric corporations for their nuclear and other uneconomic generation costs as described in Sections 367.1 and 367.2.

(c) No utility tax, bond payment, surcharge, or other assessment in any form may be levied against any electric utility customer to pay for the rate reductions described in subdivisions (a) and (b).

SEC. 4. Section 367.1 is added to the Public Utilities Code, to read:

367.1. (a) Effective immediately, costs for nuclear generation plants and related assets and obligations shall not be paid for by electric utility customers, except to the extent that these costs are recovered by the sale of electricity at competitive market prices as reflected in independent Power Exchange revenues or in contracts with the Independent System Operator.

(b) No utility tax, bond payment, surcharge, or other assessment in any form may be levied against any electric utility customer for the recovery of nuclear costs described in subdivision (a).

(c) This section does not apply to reasonable nuclear decommissioning costs as referenced in Section 379.

SEC. 5. Section 367.2 is added to the Public Utilities Code, to read:

367.2. (a) Effective immediately, costs for non-nuclear generation plants and related assets and obligations may not be recovered from electric utility customers under the cost recovery mechanism provided for by Sections 367 to 376, inclusive, except to the extent that those costs are recovered by the sale of electricity at competitive market rates from independent Power Exchange revenues or from contracts with the Independent System Operator, unless the electric utility first demonstrates to the satisfaction of the commission at a public hearing that failure to recover those costs would deprive it of the opportunity to earn a fair rate of return.

(b) This section does not apply to costs associated with renewable non-nuclear electricity generation facilities described in paragraph (3) of subdivision (c) of Section 381, or to costs associated with power purchases from qualifying facilities pursuant to the federal Public Utility Regulatory Policies Act of 1978 and related commission decisions.

SEC. 6. Section 840.1 is added to the Public Utilities Code, to read:

840.1. Notwithstanding current Sections 840 to 847, inclusive:

(a) No electric corporation, affiliate of an electric corporation, or any other financing entity may assess or collect any utility tax, bond payment, surcharge, or any other assessment authorized by a Public Utilities Commission financing order issued pursuant to Sections 840 to 847, inclusive, for the purpose of paying principal, interest, or other costs of any bonds authorized by those sections.

(b) The Public Utilities Commission may not issue any financing order pursuant to Sections 840 to 847, inclusive, after the effective date of this section.

(c) Any electric corporation, affiliate of an electric corporation, or other financing entity that is subject to a financing order issued under Section 841 that is determined by a court of competent jurisdiction to be enforceable notwithstanding subdivision (a) of this section, shall offset any utility tax, bond payment, surcharge, or other assessment described in subdivision (a) collected from any customer with an equal credit to be applied concurrently with the collection of the utility tax, bond payment, surcharge, or other assessment.

SEC. 7. Section 841.1 is added to the Public Utilities Code, to read:

841.1. Any underwriter or bond purchaser who purchases rate reduction bonds after November 24, 1997, issued pursuant to current Sections 840 to 847, inclusive, shall be deemed to have notice of the provisions of Sections 367.1, 367.2, 368.1, and 840.1.

SEC. 8. Section 1701.5 is added to the Public Utilities Code, to read:

1701.5. (a) Any action or proceeding of the Public Utilities Commission pursuant to Sections 367.1, 367.2, 368.1, and 840.1 shall require a public hearing where evidence is taken by, and discretion is vested in, the Public Utilities Commission.

(b) Any change to the amount of above-market costs for non-nuclear generation plants and related assets and obligations being recovered from utility customers shall be made only after the electrical corporation has provided notice to the public pursuant to Section 454.

(c) Any action or proceeding to attack, review, set aside, void, or annul a determination, finding, or decision of the Public Utilities Commission relating to electric restructuring under Chapter 2.3 (commencing with Section 330) and financing of transition costs as described in Article 5.5 (commencing with Section 840) of Chapter 4 shall be in accordance with Section 1094.5 of the Code of Civil Procedure. In any such action, the writ of mandate shall lie from the court of appeals to the Public Utilities Commission. The court may not exercise its independent judgment, but shall determine only whether the determination, finding, or decision of the Public Utilities Commission is supported by substantial evidence in light of the whole record.

SEC. 9. Section 394.15 is added to the Public Utilities Code, to read:

394.15. The confidentiality of residential and small commercial customer information shall be fully protected as provided by law. No entity providing electricity services, including an electric corporation, may provide information about a residential or small commercial customer to any third party without the express written consent of the customer.

SEC. 10. Section 393 is added to the Public Utilities Code, to read:

393. The Public Utilities Commission shall require each electric utility or electric service provider to provide information or materials with each utility bill issued to residential and small commercial customers as the commission determines are necessary to assist consumers in obtaining low-cost, high-quality electric service options, including electric service options that reduce environmental impacts such as those that rely on renewable energy sources, and to protect the consumers' interest in all matters concerning safe and dependable delivery of electric service.

SEC. 11. Section 330.1 is added to the Public Utilities Code, to read:

330.1. (a) "Utility tax," "bond payments," "surcharge," "assessment," or "involuntary payment" mean any charge that serves to permit an electric corporation to recover the value of uneconomic assets from ratepayers, and includes, but is not limited to, a "fixed transition amount," as defined by subdivision (d) of Section 840, and the "competition transition charge" that is the nonbypassable charge referred to in Sections 367 to 376, inclusive.

(b) For purposes of this section and Sections 367.1, 367.2, 368.1, 393, and 840.1, the terms "electric utility," "electric utility company," and "electric corporation" have the same meaning as the term "electrical corporation" as defined in Section 218.

SEC. 12. Section 367 of the Public Utilities Code is amended to read:

367. The commission shall identify and determine those costs and categories of costs for generation-related assets and obligations, consisting of generation facilities, generation-related regulatory assets, nuclear settlements, and power purchase contracts, including, but not limited to, restructurings, renegotiations or terminations thereof approved by the commission, that were being collected in commission-approved rates on December 20, 1995, and that may become uneconomic as a result of a competitive generation market, in that these costs may not be recoverable in market prices in a competitive market, and appropriate costs incurred after December 20, 1995, for capital additions to generating facilities existing as of December 20, 1995, that the commission determines are reasonable and should be recovered, provided that these additions are necessary to maintain the facilities through December 31, 2001. These uneconomic costs shall include transition costs as defined in subdivision (f) of Section 840, and shall be recovered from all customers or in the case of fixed transition amounts, from

the customers specified in subdivision (a) of Section 841, on a nonbypassable basis and shall:

(a) ~~Be amortized over a reasonable time period, including collection on an accelerated basis, consistent with not increasing rates for any rate schedule, contract, or tariff option above the levels in effect on June 10, 1996; provided that, the recovery shall not extend beyond December 31, 2001, except as follows:~~

~~(1) Costs associated with employee-related transition costs as set forth in subdivision (b) of Section 375 shall continue until fully collected; provided, however, that the cost collection shall not extend beyond December 31, 2006.~~

~~(2) Power purchase contract obligations shall continue for the duration of the contract. Costs associated with any buy-out, buy-down, or renegotiation of the contracts shall continue to be collected for the duration of any agreement governing the buy-out, buy-down, or renegotiated contract; provided, however, no power purchase contract shall be extended as a result of the buy-out, buy-down, or renegotiation.~~

~~(3) Costs associated with contracts approved by the commission to settle issues associated with the Biennial Resource Plan Update may be collected through March 31, 2002; provided that only 80 percent of the balance of the costs remaining after December 31, 2001, shall be eligible for recovery.~~

~~(4) Nuclear incremental cost incentive plans for the San Onofre nuclear generating station shall continue for the full term as authorized by the commission in Decision 96-01-011 and Decision 96-04-059; provided that the recovery shall not extend beyond December 31, 2003.~~

~~(5) Costs associated with the exemptions provided in subdivision (a) of Section 374 may be collected through March 31, 2002, provided that only fifty million dollars ($50,000,000) of the balance of the costs remaining after December 31, 2001, shall be eligible for recovery.~~

~~(6) Fixed transition amounts, as defined in subdivision (d) of Section 840, may be recovered from the customers specified in subdivision (a) of Section 841 until all rate reduction bonds associated with the fixed transition amounts have been paid in full by the financing entity.~~

~~(b)~~ Be based on a calculation mechanism that nets the negative value of all above market utility-owned generation-related assets against the positive value of all below market utility-owned generation related assets. For those assets subject to valuation, the valuations used for the calculation of the uneconomic portion of the net book value shall be determined not later than December 31, 2001, and shall be based on appraisal, sale, or other divestiture. The commission's determination of the costs eligible for recovery and of the valuation of those assets at the time the assets are exposed to market risk or retired, in a proceeding under Section 455.5, 851, or otherwise, shall be final, and notwithstanding Section 1708 or any other provision of law, may not be rescinded, altered or amended.

~~(c)~~

(b) Be limited in the case of utility-owned fossil generation to the uneconomic portion of the net book value of the fossil capital investment existing as of January 1, 1998, and appropriate costs incurred after December 20, 1995, for capital additions to generating facilities existing as of December 20, 1995, that the commission determines are reasonable and should be recovered, provided that the additions are necessary to maintain the facilities through December 31, 2001. All "going forward costs" of fossil plant operation, including operation and maintenance, administrative and general, fuel and fuel transportation costs, shall be recovered solely from independent Power Exchange revenues or from

contracts with the Independent System Operator, provided that for the purposes of this chapter, the following costs may be recoverable pursuant to this section:

(1) Commission-approved operating costs for particular utility-owned fossil powerplants or units, at particular times when reactive power/voltage support is not yet procurable at market-based rates in locations where it is deemed needed for the reactive power/voltage support by the Independent System Operator, provided that the units are otherwise authorized to recover market-based rates and provided further that for an electrical corporation that is also a gas corporation and that serves at least four million customers as of December 20, 1995, the commission shall allow the electrical corporation to retain any earnings from operations of the reactive power/voltage support plants or units and shall not require the utility to apply any portions to offset recovery of transition costs. Cost recovery under the cost recovery mechanism shall end on December 31, 2001.

(2) An electrical corporation that, as of December 20, 1995, served at least four million customers, and that was also a gas corporation that served less than four thousand customers, may recover, pursuant to this section, 100 percent of the uneconomic portion of the fixed costs paid under fuel and fuel transportation contracts that were executed prior to December 20, 1995, and were subsequently determined to be reasonable by the commission, or 100 percent of the buy-down or buy-out costs associated with the contracts to the extent the costs are determined to be reasonable by the commission.

~~(d)~~

(c) Be adjusted throughout the period through March 31, 2002, to track accrual and recovery of costs provided for in this subdivision. Recovery of costs prior to December 31, 2001, shall include a return as provided for in Decision 95-12-063, as modified by Decision 96-01-009, together with associated taxes.

~~(e)~~

(d) (1) Be allocated among the various classes of customers, rate schedules, and tariff options to ensure that costs are recovered from these classes, rate schedules, contract rates, and tariff options, including self-generation deferral, interruptible, and standby rate options in substantially the same proportion as similar costs are recovered as of June 10, 1996, through the regulated retail rates of the relevant electric utility, provided that there shall be a firewall segregating the recovery of the costs of competition transition charge exemptions such that the costs of competition transition charge exemptions granted to members of the combined class of residential and small commercial customers shall be recovered only from these customers, and the costs of competition transition charge exemptions granted to members of the combined class of customers, other than residential and small commercial customers, shall be recovered only from these customers.

(2) Individual customers shall not experience rate increases as a result of the allocation of transition costs. However, customers who elect to purchase energy from suppliers other than the Power Exchange through a direct transaction, may incur increases in the total price they pay for electricity to the extent the price for the energy exceeds the Power Exchange price.

(3) The commission shall retain existing cost allocation authority, provided the firewall and rate freeze principles are not violated.

SEC. 13. Section 368 of the Public Utilities Code is amended to read:

368. Each electrical corporation shall propose a cost recovery plan to the commission for the recovery of the uneconomic costs of an electrical

corporation's generation-related assets and obligations identified in Section 367. The commission shall authorize the electrical corporation to recover the costs pursuant to the plan if the plan meets the following criteria:

(a) The cost recovery plan shall set rates for each customer class, rate schedule, contract, or tariff option, at levels equal to the level as shown on electric rate schedules as of June 10, 1996, provided that rates for residential and small commercial customers shall be reduced so that these customers shall receive rate reductions of no less than 10 percent for 1998 continuing through 2002. These rate levels for each customer class, rate schedule, contract, or tariff option shall remain in effect until the earlier of March 31, 2002, or the date on which the commission-authorized costs for utility generation-related assets and obligations have been fully recovered. The electrical corporation shall be at risk for those costs not recovered during that time period. Each utility shall amortize its total uneconomic costs, to the extent possible, such that for each year during the transition period its recorded rate of return on the remaining uneconomic assets does not exceed its authorized rate of return for those assets. For purposes of determining the extent to which the costs have been recovered, any over-collections recorded in Energy Costs Adjustment Clause and Electric Revenue Adjustment Mechanism balancing accounts, as of December 31, 1996, shall be credited to the recovery of the costs.

(b) The cost recovery plan shall provide for identification and separation of individual rate components such as charges for energy, transmission, distribution, public benefit programs, and recovery of uneconomic costs. The separation of rate components required by this subdivision shall be used to ensure that customers of the electrical corporation who become eligible to purchase electricity from suppliers other than the electrical corporation pay the same unbundled component charges, other than energy, that a bundled service customer pays. No cost shifting among customer classes, rate schedules, contract, or tariff options shall result from the separation required by this subdivision. Nothing in this provision is intended to affect the rates, terms, and conditions or to limit the use of any Federal Energy Regulatory Commission-approved contract entered into by the electrical corporation prior to the effective date of this provision.

(c) In consideration of the risk that the uneconomic costs identified in Section 367 may not be recoverable within the period identified in subdivision (a) of Section 367, an electrical corporation that, as of December 20, 1995, served more than four million customers, and was also a gas corporation that served less than four thousand customers, shall have the flexibility to employ risk management tools, such as forward hedges, to manage the market price volatility associated with unexpected fluctuations in natural gas prices, and the out-of-pocket costs of acquiring the risk management tools shall be considered reasonable and collectible within the transition freeze period. This subdivision applies only to the transaction costs associated with the risk management tools and shall not include any losses from changes in market prices.

(d) ~~In order to ensure implementation of the cost recovery plan, the limitation on the maximum amount of cost recovery for nuclear facilities that may be collected in any year adopted by the commission in Decision 96-01-011 and Decision 96-04-059 shall be eliminated to allow the maximum opportunity to collect the nuclear costs within the transition cap period.~~

~~(e)~~ As to an electrical corporation that is also a gas corporation serving more than four million California customers, so long as any cost recovery plan adopted in accordance with this section satisfies subdivision (a), it shall also

provide for annual increases in base revenues, effective January 1, 1997, and January 1, 1998, equal to the inflation rate for the prior year plus two percentage points, as measured by the consumer price index. The increase shall do both of the following:

(1) Remain in effect pending the next general rate case review, which shall be filed not later than December 31, 1997, for rates that would become effective in January 1999. For purposes of any commission-approved performance-based ratemaking mechanism or general rate case review, the increases in base revenue authorized by this subdivision shall create no presumption that the level of base revenue reflecting those increases constitute the appropriate starting point for subsequent revenues.

(2) Be used by the utility for the purposes of enhancing its transmission and distribution system safety and reliability, including, but not limited to, vegetation management and emergency response. To the extent the revenues are not expended for system safety and reliability, they shall be credited against subsequent safety and reliability base revenue requirements. Any excess revenues carried over shall not be used to pay any monetary sanctions imposed by the commission.

~~(f)~~

(e) The cost recovery plan shall provide the electrical corporation with the flexibility to manage the renegotiation, buy-out, or buy-down of the electrical corporation's power purchase obligations, consistent with review by the commission to assure that the terms provide net benefits to ratepayers and are otherwise reasonable in protecting the interests of both ratepayers and shareholders.

~~(g) An example of a plan authorized by this section is the document entitled "Restructuring Rate Settlement" transmitted to the commission by Pacific Gas and Electric Company on June 12, 1996.~~

SEC. 14. Initiative Integrity.

(a) This act shall be broadly construed and applied in order to fully promote its underlying purposes, and to be consistent with the United States Constitution and the California Constitution. If any provision of this act conflicts directly or indirectly with any other provision of law, including but not limited to the cost recovery mechanism provided for by Sections 367 through 376 of the Public Utilities Code, or any other statute previously enacted by the Legislature, it is the intent of the voters that those other provisions shall be null and void to the extent that they are inconsistent with this act, and are hereby repealed.

(b) No provision of this act may be amended by the Legislature except (1) to further the purpose of that provision, by a statute passed in each house by rollcall vote entered in the journal, two thirds of the membership concurring, or (2) by a statute that becomes effective only when approved by the electorate. No amendment by the Legislature may be deemed to further the purposes of this act unless it furthers the purpose of the specific provision of this act that is being amended. In any judicial action with respect to any legislative amendment, the court shall exercise its independent judgment as to whether or not the amendment satisfies the requirements of this subdivision.

(c) 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 in the absence of the invalid provision or application. To this end, the provisions of this act are severable.

(d) It is the will of the People that any legal challenges to the validity of any provision of this act be acted upon by the courts on an expedited basis.

LIST OF OFFICERS

LIST OF OFFICERS

1998

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Sacramento 95814

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Pete Wilson	Governor	San Diego
Gray Davis	Lieutenant Governor	Los Angeles
Bill Jones	Secretary of State	Fresno
Kathleen Connell	Controller	Los Angeles
Matt Fong	Treasurer	Los Angeles
Daniel E. Lungren	Attorney General	Roseville
Chuck Quackenbush	Insurance Commissioner	Rio Linda
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Bion M. Gregory	Legislative Counsel	Sacramento

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Royce, Edward	R	39	Los Angeles, Orange	305 N. Harbor Blvd., #300 Fullerton 92632
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Burton, John L.	Attorney	D	3	Marin, San Francisco, Sonoma.....	601 Van Ness Ave., Suite 2030, San Francisco 94102. Ph: (415) 447-1240; 3501 Civic Center, Room 425, San Rafael 94903. Ph: (415) 479-6612
Calderon, Charles M.	Attorney	D	30	Los Angeles.....	400 N. Montebello Blvd., #101, Montebello 90640. Ph: (213) 724-6175
Costa, Jim	Full-time Legislator.....	D	16	Fresno, Kern, Kings, Madera, Tulare	2550 Mariposa Mall, Suite 2016, Fresno 93721. Ph: (209) 264-3078; 901 Tower Way, Suite 202, Bakersfield 93309. Ph: (805) 323-0442
Craven, William A. .	Full-time Legislator.....	R	38	Orange, San Diego ..	2121 Palomar Airport Rd., Suite 100, Carlsbad 92009. Ph: (760) 438-3814
Dills, Ralph C.	Full-time Legislator.....	D	28	Los Angeles.....	16921 S. Western Ave., Suite 101, Gardena 90247. Ph: (310) 324-4969
Greene, Leroy F.	Civil Engineer ...	D	6	Sacramento.....	P.O. Box 254646, Sacramento 95825. Ph: (916) 324-4937
Hayden, Tom	Teacher/Writer ..	D	23	Los Angeles.....	10951 W. Pico Blvd., #202, Los Angeles 90064. Ph: (310) 441-9084
Haynes, Ray	Businessman/ Attorney.....	R	36	Riverside, San Diego	6840 Indiana Ave., Suite 275, Riverside 92506. Ph: (909) 782-4111
Hughes, Teresa.....	Education-Professor.....	D	25	Los Angeles.....	1 Manchester Blvd., Suite 600, Inglewood 90301. Ph: (310) 412-0393
Hurtt, Rob	Businessman	R	34	Orange.....	11642 Knott St., Suite 8, Garden Grove 92841. Ph: (714) 898-8353
Johannessen, Maurice	Businessman	R	4	Butte, Colusa, Glenn, Sacramento, Shasta, Siskiyou, Solano, Sutter, Tehama, Trinity, Yolo	410 Hemsted Dr., Suite 200, Redding 96002. Ph: (916) 224-4706
Johnson, Ross	Full-time Legislator.....	R	35	Orange.....	18552 MacArthur Blvd., Suite 395, Irvine 92612. Ph: (714) 833-0180
Johnston, Patrick.....	Full-time Legislator.....	D	5	Sacramento, San Joaquin	1020 N St., Suite 504, Sacramento 95814. Ph: (916) 323-4306; 31 East Channel St., Room 440, Stockton 95202. Ph: (209) 948-7930
Karnette, Betty	Businesswoman/ Teacher	D	27	Los Angeles.....	3711 Long Beach Blvd., Suite 801, Long Beach 90807. Ph: (562) 997-0794

MEMBERS OF THE SENATE—Continued

Name	Occupation	Party	Dist.	Counties	District Address
Kelley, David G.	Citrus Rancher ..	R	37	Imperial, Riverside, San Diego.....	11440 W. Bernardo Court, Suite 104, San Diego 92127. Ph: (619) 675-8211; 73-710 Fred Waring Drive, Suite 108, Palm Desert 92260. Ph: (760) 346-2099
Knight, Wm. "Pete"	Full-time Legislator.....	R	17	Inyo, Kern, Los Angeles, San Bernardino.....	1008 W. Avenue M-14, Suite G, Palmdale 93551. Ph: (805) 274-0188; 25709 Rye Canyon Road, Suite 105, Santa Clarita 91355. Ph: (805) 294-8184; 15278 Main Street, Suite D, Hesperia 92345. Ph: (760) 244-2402; 128 East California Avenue, Suite A, Ridgecrest 93556. Ph: (760) 371-1640
Kopp, Quentin L.	Attorney at Law	I	8	San Francisco, San Mateo	2171 Junipero Serra Blvd., Suite 530, Daly City 94014. Ph: (415) 301-1721
Lee, Barbara	Full-time Legislator.....	D	9	Alameda, Contra Costa.....	1970 Broadway, Suite 1030, Oakland 94612. Ph: (510) 286-1333
Leslie, Tim	Realtor.....	R	1	Alpine, Amador, Butte, Calaveras, El Dorado, Lassen, Modoc, Mono, Nevada, Placer, Plumas, Sierra, Yuba	1200 Melody Lane, Suite 110, Roseville 95678. Ph: (916) 969-8232, (916) 783-8232; 330 Fair Lane, Placerville 95667. Ph: (530) 621-3891
Lewis, John R.	Businessman	R	33	Orange.....	1940 W. Orangewood Ave., Suite 106, Orange 92668. Ph: (714) 939-0604. Fax: (714) 939-0730
Lockyer, Bill	Full-time Legislator.....	D	10	Alameda, Santa Clara	22634 Second St., Suite 104, Hayward 94541. Ph: (510) 582-8800
Maddy, Ken	Attorney	R	14	Fresno, Kern, Tulare	2503 West Shaw Ave., Suite 101, Fresno 93711. Ph: (209) 445-5567; 841 Mohawk St., Ste. 190, Bakersfield 93309. Ph: (805) 324-6188
McPherson, Bruce ..	Businessman	R	15	Monterey, San Benito, Santa Clara, Santa Cruz .	701 Ocean St., Room 318A, Santa Cruz 95060. Ph: (408) 425-0401; 7 John Street, Salinas 93901. Ph: (408) 753-6386
Monteith, Dick	Agriculture/ Businessman...	R	12	Fresno, Madera, Mariposa, Merced, San Joaquin, Stanislaus, Tuolumne	1620 N. Carpenter Road, Suite A-4, Modesto 95358 Ph: (209) 577-6592; 777 W. 22nd St., Suite B, Merced 95340. Ph: (209) 722-4988; 1901 Howard Road, Suite B, Madera, 93637. Ph: (209) 674-2898
Mountjoy, Richard ..	Contractor	R	29	Los Angeles.....	500 N. First Ave., Suite 3, Arcadia 91006. Ph: (818) 446-3134

MEMBERS OF THE SENATE—Continued

Name	Occupation	Party	Dist.	Counties	District Address
O'Connell, Jack	Teacher.....	D	18	San Luis Obispo, Santa Barbara, Ventura	228 W. Carrillo, Suite F, Santa Barbara 93101. Ph: (805) 966-2296; 89 S. Calif., Suite E, Ventura 93001. Ph: (805) 641-1500; 1260 Chorro St., Suite A, San Luis Obispo 93401. Ph: (805) 547-1800
Peace, Steve	Financial Officer	D	40	San Diego.....	7877 Parkway Dr., Suite 1B, La Mesa 91942. Ph: (619) 463-0243
Polanco, Richard.....	Full-time Legislator.....	D	22	Los Angeles.....	300 S. Spring St., Suite 8710, Los Angeles 90013. Ph: (213) 620-2529
Rainey, Richard K. .	Full-time Legislator.....	R	7	Alameda, Contra Costa.....	1948 Mt. Diablo Blvd., Walnut Creek 94596. Ph: (510) 280-0276. Fax: (510) 280-0299
Rosenthal, Herschel	Full-time Legislator.....	D	20	Los Angeles.....	6150 Van Nuys Blvd., Suite 400, Van Nuys 91401. Ph: (818) 901-5588
Schiff, Adam B.	Full-time Legislator.....	D	21	Los Angeles.....	35 South Raymond Avenue, Suite 205, Pasadena 91105. Ph: (626) 683-0282
Sher, Byron	Law Professor ...	D	11	San Mateo, Santa Clara	260 Main Street, Suite 201, Redwood City 94063. Ph: (415) 364-2080; 5589 Winfield Blvd., Suite 102, San Jose 95123. Ph: (408) 226-2992
Solis, Hilda L.	Full-time Legislator.....	D	24	Los Angeles.....	4401 Santa Anita Avenue, 2nd Floor, El Monte 91731. Ph: (818) 448-1271
Thompson, Mike	Full-time Representative	D	2	Del Norte, Humboldt, Lake, Mendocino, Napa, Solano, Sonoma ...	1040 Main St., Suite 101, Napa 94559. Ph: (707) 224-1990; 50 D St., Suite 120A, Santa Rosa 95404. Ph: (707) 576-2771; 317 3rd St., Suite 6, Eureka 95501. Ph: (707) 445-6508
Vasconcellos, John ..	Attorney	D	13	Santa Clara	100 Paseo de San Antonio, Suite 209, San Jose 95113. Ph: (408) 286-8318
Watson, Diane	Educator-School Psychologist ...	D	26	Los Angeles.....	4401 Crenshaw Blvd., Suite 300, Los Angeles 90043. Ph: (213) 295-6656
Wright, Cathie	Full-time Legislator.....	R	19	Los Angeles, Ventura	2345 Erringer Rd., Suite 212, Simi Valley 93065

OFFICERS AND ATTACHÉS OF THE SENATE

Title	Name	Capitol Office
President of Senate.....	Gray Davis	1114 State Capitol
President pro Tempore	John Burton.....	205 State Capitol
Secretary of Senate	Gregory Schmidt	3044 State Capitol
Sergeant at Arms	Tony Beard.....	3030 State Capitol
Chaplain	Rev. Deacon Walter J. Little III.....	3044 State Capitol
Chief Assistant Secretary	John W. Rovane IV	3044 State Capitol
Minute Clerk	Walter J. Little III.....	3044 State Capitol
History Clerk.....	David H. Kneale.....	3044 State Capitol
Assistant Secretary.....	Steve Hummelt.....	3044 State Capitol
File Clerk	Marlissa Hernandez	3044 State Capitol
Engrossing and Enrolling Clerk.....	Marie Harlan	B30 State Capitol

MEMBERS OF THE ASSEMBLY

Name	Occupation	Party	Dist.	Capitol Office	Counties	District Office Mailing Address
Ackerman, Dick ..	Business Lawyer.....	R	72	4167	Orange.....	305 N. Harbor Blvd., Suite 303, Fullerton 92832
Aguiar, Fred	Legislator/ Businessman.....	R	61	5135	Los Angeles, San Bernardino.....	304 West F Street, Ontario 91762
Alby, Barbara	Businesswoman...	R	5	3098	Sacramento.....	4811 Chippendale Drive, Suite 501, Sacramento 95841
Alquist, Elaine	Businesswoman/ Educator	D	22	5144	Santa Clara.....	275 Saratoga Avenue, Suite 205, Santa Clara 95050
Aroner, Dion	State Social Services Specialist	D	14	2163	Alameda, Contra Costa.....	918 Parker Street, Suite A-13, Berkeley 94710
Ashburn, Roy	Legislator	R	32	4102	Kern, Tulare	1200 Truxtun Avenue, #120, Bakersfield 93301
Baca, Joe	Businessman/ Legislator.....	D	62	3120	San Bernardino.....	201 North E Street, Suite 102, San Bernardino 92401
Baldwin, Steve	Property Management.....	R	77	2002	San Diego.....	8419 La Mesa Boulevard, Suite B, La Mesa 91941
Battin, Jim	Businessman	R	80	2175	Imperial, Riverside..	73-710 Fred Waring Drive, Suite 112, Palm Desert 92260
Baugh, Scott	Corporate Counsel.....	R	67	4177	Orange.....	16052 Beach Blvd., Suite 160-N, Huntington Beach 92647
Bordonaro, Jr., Tom J.	Farmer/ Businessman.....	R	33	2176	San Luis Obispo, Santa Barbara	1065 Higuera Street, Suite 200, San Luis Obispo 93401
Bowen, Debra	Public Law Attorney.....	D	53	4112	Los Angeles.....	18411 Crenshaw Boulevard, Suite 280, Torrance 90504
Bowler, Larry	Retired Sheriff's Lieutenant.....	R	10	2111	Sacramento, San Joaquin	10370 Old Placerville Road, Suite 106, Sacramento 95827
Brewer, Marilyn C.	Manufacturing Businesswoman	R	70	2016	Orange.....	18952 MacArthur Boulevard, Suite 220, Irvine 92612
Brown, Valerie	Educator/ Businesswoman	D	7	3013	Napa, Solano, Sonoma.....	50 D Street, Suite 301, Santa Rosa 95404
Bustamante, Cruz M.	Full-time Legislator.....	D	31	5016	Fresno, Tulare	2550 Mariposa Mall, Room 5006, Fresno 93721
Campbell, Bill	Businessman/ Legislator.....	R	71	5126	Orange.....	1940 N. Tustin, #102, Orange 92865
Cardenas, Tony ...	Businessman/ Engineer	D	39	3126	Los Angeles.....	9140 Van Nuys Blvd., Suite 109, Panorama City 91402
Cardoza, Dennis .	Businessman	D	26	2141	Merced, San Joaquin, Stanislaus	384 East Olive, Suite 2, Turlock 95380
Cedillo, Gil	Community Organization Director	D	46	5128	Los Angeles.....	304 South Broadway, Suite 210, Los Angeles 90013
Cunneen, Jim	Legislator/ Small Businessman.....	R	24	2174	Santa Clara.....	901 Campisi Way, Suite 300, Campbell 95008
Davis, Susan	Full-time Legislator.....	D	76	2013	San Diego.....	1010 University Avenue, Suite C-207, San Diego 92103
Ducheny, Denise Moreno	Attorney	D	79	6026	San Diego.....	2414 Hoover Avenue, Suite A, National City 91950

MEMBERS OF THE ASSEMBLY—Continued

Name	Occupation	Party	Dist.	Capitol Office	Counties	District Office Mailing Address
Escutia, Martha M.	Attorney	D	50	3146	Los Angeles	2650 Zoe Avenue, Suite 2-A, Huntington Park 90255
Figueroa, Liz	Businesswoman	D	20	448	Alameda, Santa Clara	43271 Mission Boulevard, Fremont 94539
Firestone, Brooks	Farmer	R	35	2158	Santa Barbara, Ventura	101 West Anapamu Street, Suite A, Santa Barbara 93101
Floyd, Richard	Legislator	D	55	4016	Los Angeles	One Civic Plaza, Suite 320, Carson 90745
Frusetta, Peter	Rancher	R	28	5175	Monterey, San Benito, Santa Clara, Santa Cruz	321 First Street, Suite A, Hollister 95023
Gallegos, Martin	Doctor of Chiropractic	D	57	6005	Los Angeles	13177 Ramona Boulevard, Suite G, Irwindale 91706
Goldsmith, Jan	Full-time Legislator	R	75	4162	San Diego	12307 Oak Knoll Road, Suite A, Poway 92064
Granlund, Brett	Businessman	R	65	4164	Riverside, San Bernardino	34932 Yucaipa Boulevard, Yucaipa 92399
Havice, Sally	Legislator	D	56	5150	Los Angeles	17100 Pioneer Boulevard, Suite 290, Artesia 90701
Hertzberg, Robert M.	Attorney/Small Businessman	D	40	320	Los Angeles	6150 Van Nuys Blvd., Suite #305, Van Nuys 91401
Honda, Mike	Legislator	D	23	5155	Santa Clara	100 Paseo de San Antonio, #300, San Jose 95113
House, George	Farmer	R	25	3141	Fresno, Madera, Mariposa, Stanislaus, Tuolumne	3600 Sisk Road, Suite 5-D3, Modesto 95356
Kaloogian, Howard	Tax/Trust Attorney	R	74	4130	San Diego	701 Palomar Airport Road, Suite 160, Carlsbad 92009
Keeley, Fred	Legislator	D	27	4139	Monterey, Santa Cruz	701 Ocean Street, Suite 318 B, Santa Cruz 95060
Knox, Wally	Attorney	D	42	6025	Los Angeles	5757 Wilshire Boulevard, Suite 645, Los Angeles 90036
Kuehl, Sheila James	Full-time Legislator	D	41	3160	Los Angeles	16130 Ventura Boulevard, Suite 230, Encino 91436
Kuykendall, Steven T.	Legislator/ Businessman	R	54	5158	Los Angeles	444 West Ocean Boulevard, Suite 707, Long Beach 90802
Leach, Lynne C.	Small Business Owner	R	15	4015	Alameda, Contra Costa	800 South Broadway, Suite 304, Walnut Creek 94596
Lempert, Ted	Full-time Legislator	D	21	2188	San Mateo, Santa Clara	4149 El Camino Way, Suite B, Palo Alto 94306
Leonard, Bill	Legislator/ Businessman	R	63	3104	San Bernardino	10535 Foothill Boulevard, Suite 276, Rancho Cucamonga 91730
Machado, Mike	Farmer/ Businessman	D	17	5136	San Joaquin	31 East Channel Street, Suite 306, Stockton 95202
Margett, Bob	Businessman	R	59	4144	Los Angeles	55 East Huntington Drive, Suite 120, Arcadia 91006

MEMBERS OF THE ASSEMBLY—Continued

Name	Occupation	Party	Dist.	Capitol Office	Counties	District Office Mailing Address
Martinez, Diane ..	Full-time Legislator.....	D	49	2117	Los Angeles.....	205 S. Chapel Avenue, Suite B, Alhambra 91801
Mazzoni, Kerry ...	Legislator/ Businesswoman	D	6	3123	Marin, Sonoma.....	3501 Civic Center Drive, Suite 335, San Rafael 94903
McClintock, Tom	Budget Reduction Analyst	R	38	4153	Los Angeles, Ventura	10727 White Oak Avenue, Suite 124, Granada Hills 91344
Migden, Carole ...	Full-time Legislator.....	D	13	2114	San Francisco.....	1388 Sutter Street, Suite 710, San Francisco 94104
Miller, Gary G. ...	Developer.....	R	60	6027	Los Angeles.....	17870 Castleton Street, Suite 205, City of Industry 91748
Morrissey, Jim	Small Businessman.....	R	69	3147	Orange.....	930 West 17th Street, Suite C, Santa Ana 92706
Morrow, Bill	Attorney	R	73	5164	Orange, San Diego..	27126-A Paseo Espada, Suite 1625, San Juan Capistrano 92675
Murray, Kevin	Full-time Legislator.....	D	47	4126	Los Angeles.....	600 Corporate Pointe, Suite 1020, Culver City 90230
Napolitano, Grace F.	Full-time Legislator.....	D	58	4005	Los Angeles.....	10100 Pioneer Boulevard, Suite 107, Santa Fe Springs 90670
Olberg, Keith	Businessman	R	34	4117	Inyo, Kern, San Bernardino.....	14011 Park Avenue, Suite 470, Victorville 92392
Oller, Thomas 'Rico'	Business Owner ..	R	4	4116	Alpine, Amador, Calaveras, El Dorado, Mono, Placer.....	2999 Douglas Boulevard, Suite 120, Roseville 95661
Ortiz, Deborah	Full-time Legislator.....	D	9	2148	Sacramento.....	1215 15th Street, Suite 120, Sacramento 95814
Pacheco, Rod	Sr. Deputy District Attorney.....	R	64	2130	Riverside	3740 Mission Inn Avenue, Suite N-6, Riverside 92501
Papan, Louis J.	Entrepreneur/ Legislator.....	D	19	3173	San Mateo	660 El Camino Real, Suite 214, Millbrae 94030
Perata, Don	Teacher.....	D	16	3152	Alameda.....	299 Third Street, Suite 100, Oakland 94607
Poochigian, Charles	Attorney	R	29	6031	Fresno, Tulare	4974 East Clinton Way, Suite 100, Fresno 93727
Prenter, Robert	Legislator	R	30	4017	Fresno, Kern, Kings, Madera	800 N. Irwin Street, Hanford 93230
Pringle, Curt	Small Businessman.....	R	68	2179	Orange.....	12865 Main Street, Suite 100, Garden Grove 92840
Richter, Bernie	Full-time Legislator.....	R	3	2137	Butte, Lassen, Modoc, Nevada, Plumas, Sierra, Yuba	460 W. East Avenue, Suite 120, Chico 95926
Runner, George ...	Businessman/ Educator/ Legislator.....	R	36	4009	Los Angeles.....	709 W. Lancaster Boulevard, Lancaster 93534
Scott, Jack	Legislator/ Professor.....	D	44	2196	Los Angeles.....	215 N. Marengo Avenue, Suite 279, Pasadena 91101
Shelley, Kevin	Legislator	D	12	3091	San Francisco, San Mateo	711 Van Ness Avenue, Suite 310, San Francisco 94102

MEMBERS OF THE ASSEMBLY—Continued

Name	Occupation	Party	Dist.	Capitol Office	Counties	District Office Mailing Address
Strom-Martin, Virginia	Legislator	D	1	4098	Del Norte, Humboldt, Lake, Mendocino, Sonoma	510 O Street, Suite G, Eureka 95501
Sweeney, Michael	Teacher	D	18	4146	Alameda	22320 Foothill Blvd., Suite 130, Hayward 94541
Takasugi, Nao	Businessman/ Legislator	R	37	5160	Ventura	221 East Daily Drive, Suite 7, Camarillo 93010
Thompson, Bruce	International Businessman	R	66	2160	Riverside, San Diego	27555 Ynez Road, Suite 205, Temecula 92591
Thomson, Helen	Legislator/Nurse	D	8	4140	Sacramento, Solano, Yolo	555 Mason Street, Suite 275, Vacaville 95688
Torlakson, Tom	Educator	D	11	2003	Contra Costa	815 Estudillo Street, Martinez 94553
Villaraigosa, Antonio R.	Union Representative	D	45	219	Los Angeles	1910 Sunset Boulevard, Suite 500, Los Angeles 90026
Vincent, Edward	Legislator	D	51	5119	Los Angeles	1 Manchester Blvd., Suite 601, P.O. Box 6500, Inglewood 90306
Washington, Carl	Legislator	D	52	2136	Los Angeles	145 E. Compton Boulevard, Compton 90220
Wayne, Howard	Prosecutor	D	78	2170	San Diego	1350 Front Street, Suite 6013, San Diego 92101
Wildman, Scott	Legislator	D	43	4158	Los Angeles	109 East Harvard Avenue, Suite 305, Glendale 91205
Woods, Tom	Businessman	R	2	6011	Butte, Colusa, Glenn, Shasta, Siskiyou, Sutter, Tehama, Trinity, Yolo	100 East Cypress Avenue, Suite 100, Redding 96002
Wright, Roderick	Legislator	D	48	6012	Los Angeles	700 State Drive, Suite 103, Los Angeles 90037

OFFICERS OF THE ASSEMBLY

Name	Title	Mailing Address
Villaraigosa, Antonio R.	Speaker	1910 Sunset Boulevard, Suite 500, Los Angeles 90026
Kuehl, Sheila James	Speaker pro Tempore	16130 Ventura Boulevard, Suite 230, Encino 91436
Shelley, Kevin	Majority Floor Leader	711 Van Ness Avenue, Suite 310, San Francisco 94102
Leonard, Bill	Minority Floor Leader	10535 Foothill Blvd #276, Rancho Cucamonga 91730
Wilson, E. Dotson	Chief Clerk	State Capitol, Room 3196, Sacramento 95814
Pane, Ronald E.	Sergeant-at-Arms	State Capitol, Room 3171, Sacramento 95814

STATE JUDICIAL DEPARTMENT

SUPREME COURT JUSTICES AND OFFICERS

Terms of Court

Sessions of Court are held at San Francisco, Los Angeles and Sacramento

JUSTICES

Hon. Ronald M. George ..... Chief Justice
Hon. Stanley Mosk ..... Associate Justice
Hon. Kathryn M. Werdegar ..... Associate Justice
Hon. Joyce L. Kennard ..... Associate Justice
Hon. Ming W. Chin ..... Associate Justice
Hon. Marvin R. Baxter ..... Associate Justice
Hon. Janice Rogers Brown ..... Associate Justice
Robert F. Wandruff ..... Clerk/Administrator

COURTS OF APPEAL

FIRST APPELLATE DISTRICT

DIVISION ONE

Hon. Gary E. Strankman ..... Presiding Justice
Hon. Douglas R. Swager ..... Associate Justice
Hon. Robert Dossee ..... Associate Justice
Hon. William D. Stein ..... Associate Justice

DIVISION TWO

Hon. J. Anthony Kline ..... Presiding Justice
Hon. James Lambden ..... Associate Justice
Hon. Paul R. Haerle ..... Associate Justice
Hon. Jerome A. Smith ..... Associate Justice

DIVISION THREE

Hon. Michael J. Phelan ..... Presiding Justice
Hon. Joanne C. Parrilli ..... Associate Justice
Hon. Herbert W. Walker ..... Associate Justice
Hon. Carol A. Corrigan ..... Associate Justice

DIVISION FOUR

Hon. Carl W. Anderson ..... Admin. Presiding Justice
Hon. Marcel B. Poche ..... Associate Justice
Hon. Timothy A. Reardon ..... Associate Justice
Hon. Daniel M. Hanlon ..... Associate Justice

DIVISION FIVE

Hon. J. Clinton Peterson ..... Presiding Justice
Hon. Barbara J.R. Jones ..... Associate Justice
Hon. Donald B. King ..... Associate Justice
Hon. Zerne P. Haning ..... Associate Justice
Ron D. Barrow ..... Clerk

303 Second Street, Suite 600, Marathon Plaza—South Tower, San Francisco 94107

SECOND APPELLATE DISTRICT

DIVISION ONE

Hon. Vaino Spencer ..... Presiding Justice
Hon. Miriam A. Vogel ..... Associate Justice
Hon. William A. Masterson ..... Associate Justice
Hon. Reuben A. Ortega ..... Associate Justice

300 So. Spring St., 2nd Floor, Los Angeles 90013

DIVISION TWO

Hon. Roger Boren ..... Presiding Justice
Hon. Michael G. Nott ..... Associate Justice
Hon. John Zebrowski ..... Associate Justice
Hon. Morio L. Fukuto ..... Associate Justice

300 So. Spring St., 2nd Floor, Los Angeles 90013

DIVISION THREE

Hon. Joan Dempsey Klein ..... Presiding Justice
Hon. Richard D. Aldrich ..... Associate Justice
Hon. H. Walter Croskey ..... Associate Justice
Hon. Patti S. Kitching ..... Associate Justice

300 So. Spring St., 2nd Floor, Los Angeles 90013

DIVISION FOUR

Hon. Charles Vogel ..... Presiding Justice
Hon. Norman L. Epstein ..... Associate Justice
Hon. J. Gary Hastings ..... Associate Justice
Hon. Elizabeth A. Baron ..... Associate Justice

300 So. Spring St., 2nd Floor, Los Angeles 90013

DIVISION FIVE

Hon. Paul R. Turner ..... Presiding Justice
Hon. Orville A. Armstrong ..... Associate Justice
Hon. Margaret Grignon ..... Associate Justice
Hon. Ramona Godoy Perez ..... Associate Justice

300 So. Spring St., 2nd Floor, Los Angeles 90013

DIVISION SIX

Hon. Steven J. Stone ..... Presiding Justice
Hon. Arthur Gilbert ..... Associate Justice
Hon. Kenneth R. Yegan ..... Associate Justice
Hon. Paul H. Coffee ..... Associate Justice

200 East Santa Clara St., Ventura 93001

DIVISION SEVEN

Hon. Mildred L. Lillie ..... Presiding Justice
Hon. Earl Johnson, Jr. ..... Associate Justice
Hon. Fred Woods ..... Associate Justice
Hon. Richard C. Neal ..... Associate Justice
Joseph Lane ..... Clerk

300 So. Spring St., 2nd Floor, Los Angeles 90013

THIRD APPELLATE DISTRICT

Hon. Robert K. Puglia ..... Presiding Justice
Hon. Coleman A. Blease ..... Associate Justice
Hon. Connie M. Callahan ..... Associate Justice
Hon. Richard M. Sims III ..... Associate Justice
Hon. Rodney Davis ..... Associate Justice
Hon. Arthur G. Scotland ..... Associate Justice
Hon. George W. Nicholson ..... Associate Justice
Hon. Vance W. Raye ..... Associate Justice
Hon. Fred K. Morrison ..... Associate Justice
Vacancy ..... Associate Justice
Robert L. Liston ..... Clerk

914 Capitol Mall, Room 119, Sacramento 95814

FOURTH APPELLATE DISTRICT

DIVISION ONE

Hon. Daniel J. Kremer ..... Presiding Justice
Hon. Judith L. Haller ..... Associate Justice
Hon. Don R. Work ..... Associate Justice
Hon. Alex C. McDonald ..... Associate Justice
Hon. Patricia D. Benke ..... Associate Justice
Hon. Richard D. Huffman ..... Associate Justice
Hon. James McIntyre ..... Associate Justice
Hon. Gilbert Nares ..... Associate Justice
Stephen M. Kelly ..... Clerk

750 B St., Suite 300, San Diego 92101

DIVISION TWO

Hon. Manuel A. Ramirez ..... Presiding Justice
Hon. Barton C. Gaut ..... Senior Justice
Hon. Thomas E. Hollenhorst ..... Associate Justice
Hon. Betty Ann Richli ..... Associate Justice
Hon. Art W. McKinster ..... Associate Justice
Hon. James Ward ..... Associate Justice
Henry Espinoza ..... Chief Deputy Clerk

303 W. Fifth St., San Bernardino 92401

DIVISION THREE

Hon. David G. Sills ..... Presiding Justice
Hon. Thomas F. Crosby ..... Associate Justice
Hon. Edward J. Wallin ..... Associate Justice
Hon. Sheila Prell Sonenshine ..... Associate Justice
Hon. William F. Rylaarsdam ..... Associate Justice
Hon. William W. Bedsworth ..... Associate Justice
Joyce A. Nohavec ..... Chief Deputy Clerk

925 No. Spurgeon St., Santa Ana 92701

FIFTH APPELLATE DISTRICT

Hon. James A. Ardaiz ..... Presiding Justice
Hon. Herbert Levy ..... Associate Justice
Hon. William A. Stone ..... Associate Justice
Hon. Nickolas J. Dibiaso ..... Associate Justice
Hon. Steven M. Vartabedian ..... Associate Justice
Hon. James F. Thaxter ..... Associate Justice
Hon. Thomas A. Harris ..... Associate Justice
Hon. Robert L. Martin ..... Associate Justice
Hon. Timothy S. Buckley ..... Associate Justice
Hon. Rebecca A. Wiseman ..... Associate Justice
Eve Sproule ..... Clerk

2525 Capitol Street, Fresno 93721

SIXTH APPELLATE DISTRICT

Hon. Christopher C. Cottle ..... Presiding Justice
Hon. Patricia Bamattre-Manoukian ..... Associate Justice
Hon. Franklin D. Elia ..... Associate Justice
Hon. Eugene M. Premo ..... Associate Justice
Hon. William M. Wunderlich ..... Associate Justice
Hon. Nathan D. Mihara ..... Associate Justice
Michael J. Yerly ..... Clerk

333 West Santa Clara Street, Suite 1060, San Jose 95113

PUBLIC UTILITIES COMMISSION

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Richard A. Bilas ..... Commissioner
Jessie J. Knight ..... Commissioner
Henry M. Duque ..... Commissioner
Josiah L. Neeper ..... Commissioner
Wesley Franklin ..... Executive Director

WORKERS' COMPENSATION APPEALS BOARD

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Robert N. Ruggles ..... Member
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Richard (Dick) Gannon ..... Member
Colleen Casey ..... Member
Gale Leung ..... Member

TABLE OF LAWS ENACTED

TABLE OF RESOLUTIONS AND PROPOSED CONSTITUTIONAL AMENDMENTS ADOPTED BY THE LEGISLATURE

1998

1997–98 REGULAR SESSION
1997–98 FIRST EXTRAORDINARY SESSION

TABLE OF LAWS ENACTED

1998

1997–98 Regular Session

Ch. No.	A.B. No.	S.B. No.	Author
1	142	—	Brown (Principal coauthor: Assembly Member Strom-Martin) (Principal coauthors: Senators Knight and Thompson)
2	—	71	Kelley
3	—	10	Johnston (Coauthor: Senator Leslie) (Coauthor: Assembly Member Oller)
4	—	1184	Thompson
5	—	1311	Lockyer and Peace (Principal coauthor: Senator Schiff) (Principal coauthors: Assembly Members Hertzberg, Kuehl, and Migden)
6	382	—	Ducheny (Principal coauthor: Senator Vasconcellos) (Coauthor: Senator Thompson)
7	—	519	Lockyer
8	255	—	Thomson (Coauthor: Senator O'Connell)
9	168	—	Torlakson (Coauthor: Senator Lee)
10	—	103	Maddy
11	759	—	McClintock
12	—	44	Maddy
13	487	—	Leach
14	707	—	Ackerman
15	1243	—	Granlund, Havice, and Thomson (Coauthor: Senator Karnette)
16	1427	—	Pringle, Ackerman, Baugh, Brewer, Campbell, Morrissey, and Morrow
17	1514	—	Goldsmith
18	—	460	Kelley (Principal coauthor: Assembly Member Figueroa)
19	—	536	Mountjoy (Coauthor: Senator Polanco)
20	—	1255	Polanco
21	—	615	Burton (Principal coauthors: Assembly Members Leonard and Shelley)
22	12	—	Davis and Granlund (Principal coauthors: Assembly Members Alby and Figueroa) (Coauthors: Assembly Members Aguiar, Ashburn, Battin, Bordonaro, Cunneen, Gallegos, Kuykendall, Leach, Morrissey, Pacheco, and Richter) (Coauthors: Senators Lockyer, McPherson, Schiff, and Watson)
23	607	—	Scott (Coauthors: Assembly Members Aroner, Kuehl, Martinez, Ortiz, and Wayne) (Coauthors: Senators Karnette, Solis, Vasconcellos, and Watson)
24	—	268	Knight
25	1016	—	Hertzberg
26	1203	—	Kuykendall
27	834	—	Aroner
28	986	—	Migden and Senator Vasconcellos
29	—	845	Haynes
30	—	1019	Alpert (Coauthor: Assembly Member Strom-Martin)
31	1181	—	Escutia (Coauthors: Assembly Members Alquist, Aroner, Baca, Baugh, Cedillo, Gallegos, Havice, Honda, Keeley, Knox, Leach, Machado, Shelley, Sweeney, Thomson, Villaraigosa, Washington, and Wayne) (Coauthors: Senators Alpert, Peace, Solis, and Watson)
32	546	—	Floyd
33	1058	—	Cardoza and Senator Kelley (Coauthor: Senator Costa)
34	544	—	Lempert
35	—	147	Kopp (Coauthor: Assembly Member Papan)
36	—	411	Peace
37	1207	—	Committee on Labor and Employment (Assembly Members Floyd (Chair), Escutia, Havice, Knox, Martinez, Migden, and Washington) (Coauthors: Assembly Members Battin, Murray, and Villaraigosa)
38	1051	—	Bordonaro and Havice (Coauthor: Senator Rosenthal)
39	—	258	Kopp
40	—	488	Kopp
41	—	1289	Calderon
42	—	1384	Burton
43	1334	—	Knox and Villaraigosa (Principal coauthor: Assembly Member Leonard) (Principal coauthors: Senators Burton, Hayden, Johnson, and Schiff)
44	—	698	Rainey
45	—	1086	Schiff
46	—	1143	Sher
47	—	1191	Committee on Insurance (Senators Rosenthal (Chair), Hughes, Leslie, Peace, and Schiff)
48	—	1200	Thompson
49	510	—	Ashburn
50	1799	—	Migden
51	1858	—	Ackerman
52	1903	—	Bowler
53	—	837	Kopp
54	—	1136	Kopp
55	—	351	Peace (Principal coauthor: Senator Calderon)
56	—	1372	Knight
57	1083	—	Committee on Governmental Organization (Brown (Chair), Baca, Bordonaro, Floyd, Hertzberg, Honda, Margett, Perata, Vincent, Wayne, and Wright)
58	2021	—	Poochigian, Aguiar, Ashburn, and Figueroa (Coauthors: Senators Burton, Costa, Craven, Johnston, Kelley, Lockyer, McPherson, and Rosenthal)
59	969	—	Cardenas
60	1327	—	Wayne
61	1754	—	Havice (Coauthors: Assembly Members Leach and Pacheco)
62	185	—	Papan
63	1647	—	Scott
64	1418	—	Ortiz (Coauthors: Assembly Members Knox, Kuehl, and Mazzoni) (Coauthors: Senators Hughes, Polanco, and Sher)
65	1195	—	Torlakson (Coauthor: Assembly Member Strom-Martin) (Coauthor: Senator Kopp)
66	1211	—	Committee on Public Safety (Assembly Members Perata (Chair), Cunneen (Vice Chair), Bowler, Goldsmith, Hertzberg, House, Murray, and Washington)
67	—	432	Lewis
68	974	—	Gallegos (Principal coauthor: Senator Leslie) (Coauthors: Assembly Members Alquist, Aroner, Bordonaro, Cardoza, Cunneen, Kuehl, Machado, Murray, and Wayne) (Coauthor: Senator Watson)
69	—	625	Rosenthal
70	—	2201	Monteith
71	2087	—	Gallegos (Principal coauthor: Senator Johnston)
72	1681	—	Sweeney (Coauthors: Assembly Members Alquist, Knox, Leach, Lempert, and Perata) (Coauthor: Senator Watson)
73	—	1549	Knight
74	—	1420	Rainey
75	—	2091	Watson
76	—	1392	Alpert
77	—	1841	Burton
78	—	1865	Maddy, Ayala, Johannessen, Johnson, and Solis
79	—	2100	Polanco
80	1694	—	Ackerman
81	1874	—	Honda
82	1898	—	Honda

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Ch. No.	A.B. No.	S.B. No.	Author
83	2240	—	House
84	2038	—	Migden
85	2318	—	Knox
86	1807	—	Takasugi
87	—	30	Kopp
88	528	—	Bordonaro (Coauthor: Assembly Member Floyd) (Coauthor: Senator Burton)
89	598	—	Davis
90	2810	—	Committee on Budget (Ducheny (Chair), Aroner, Bowen, Brown, Cardenas, Cardoza, Cedillo, Davis, Figueroa, Keeley, Papan, Scott, Strom-Martin, Torlakson, and Wright)
91	—	1501	Knight
92	—	2185	Kelley
93	—	1437	Kopp
94	2776	—	Committee on Budget (Ducheny (Chair), Aroner, Brown, Cardenas, Cardoza, Cedillo, Davis, Gallegos, Keeley, Papan, Scott, Strom-Martin, Torlakson, and Wright)
95	2164	—	Wayne
96	1646	—	Battin
97	126	—	Papan
98	—	1558	McPherson
99	—	654	Johnston (Principal coauthors: Assembly Members Knox and Kuehl) (Coauthors: Senators Alpert, Kelley, Solis, Thompson, Vasconcellos, and Watson) (Coauthors: Assembly Members Alquist, Baca, Caldera, Cardoza, Figueroa, Havice, Keeley, Machado, Mazzoni, Murray, Napolitano, Perata, Washington, and Wayne)
100	—	177	Kopp
101	—	1089	Lockyer and Rainey
102	—	1380	Committee on Local Government (Senators Craven (Chair), Ayala, Johnston, Kopp, Polanco, Rainey, and Watson)
103	—	1487	Rainey
104	—	1512	Maddy
105	—	1693	Dills (Coauthor: Assembly Member Floyd)
106	—	1840	Costa
107	112	—	Escutia
108	1449	—	Brown
109	1766	—	Takasugi
110	1795	—	Runner
111	2042	—	Goldsmith
112	2293	—	Scott
113	2307	—	McClintock
114	2507	—	Committee on Health (Gallegos (Chair), Baugh, Brown, Davis, Escutia, Figueroa, Granlund, Hertzberg, Honda, Margett, Mazzoni, Ortiz, Thomson, Vincent, Wildman, and Woods)
115	2609	—	Lempert
116	2763	—	Committee on Public Employees, Retirement and Social Security (Honda (Chair), Migden, Scott, Shelley, and Wildman)
117	—	1174	Vasconcellos
118	—	1186	Committee on Public Safety (Senators Vasconcellos (Chair), Burton, Kopp, McPherson, Polanco, Rainey, Schiff, and Watson) (Coauthor: Senator Lockyer)
119	1693	—	Sweeney
120	—	1442	Rainey
121	—	1511	Haynes (Principal coauthor: Assembly Member Olberg) (Coauthor: Senator Rainey) (Coauthors: Assembly Members Ackerman, Baldwin, Bordonaro, Campbell, Granlund, Leach, Margett, Morrow, Oller, Richter, and Woods)
122	—	1728	Thompson
123	—	1939	Alpert (Coauthors: Assembly Members Alquist, Knox, Kuehl, Lempert, Ortiz, and Scott)
124	742	—	Washington (Coauthors: Senators Leslie and Rosenthal)
125	1757	—	Bowler (Coauthor: Assembly Member Wildman)
126	1855	—	Oller
127	1926	—	Wildman (Coauthors: Assembly Members Honda, Keeley, Lempert, and Ortiz) (Coauthor: Senator Solis)
128	2558	—	Mazzoni
129	—	1789	Peace
130	—	2053	Wright (Coauthors: Assembly Members Alquist, Honda, Mazzoni, Villaraigosa, and Wayne)
131	1645	—	Torlakson (Coauthor: Senator Rainey)
132	—	2137	Karnette
133	786	—	Machado (Coauthor: Assembly Member Thompson) (Coauthor: Senator Monteith)
134	2683	—	Aroner
135	1719	—	Figueroa
136	2270	—	Oller (Coauthors: Assembly Members Ashburn, Granlund, Leach, and Woods) (Coauthor: Senator Costa)
137	1905	—	Ashburn
138	2360	—	Olberg
139	2384	—	Aguiar, Kaloogian, and Sweeney (Coauthors: Senators Ayala, Craven, and O'Connell)
140	1946	—	Papan (Coauthor: Senator Kopp)
141	—	1620	Haynes
142	—	1860	Costa (Principal coauthor: Assembly Member Prenter) (Coauthor: Assembly Member Thomson)
143	—	1805	Kelley and Maddy
144	—	2009	Greene
145	1658	—	Leach
146	1301	—	Ortiz, Escutia, and Pringle
147	—	1505	Lewis, Burton, and Johnson (Coauthors: Assembly Members Leonard and Villaraigosa)
148	302	—	Runner and Vincent
149	322	—	Baca
150	1307	—	Bordonaro
151	1817	—	Takasugi
152	1852	—	Pacheco
153	1891	—	Davis
154	2046	—	Goldsmith
155	2326	—	House (Coauthor: Assembly Member Vincent)
156	2460	—	Leach and Runner (Coauthor: Assembly Member Alquist)
157	—	1365	Ayala
158	—	1424	Maddy
159	—	1452	McPherson
160	—	1862	Dills
161	—	2007	Kelley
162	—	2061	Rainey
163	333	—	Figueroa
164	609	—	Margett
165	632	—	Cardenas
166	903	—	Miller
167	1199	—	Alby (Coauthors: Assembly Members Bordonaro, Honda, Kuehl, Leach, Margett, Oller, Ortiz, and Pacheco)
168	1314	—	Leach (Coauthors: Assembly Members Baldwin, Bowler, Cunneen, Granlund, House, Machado, and Margett) (Coauthor: Senator Watson)
169	1329	—	Papan
170	1775	—	Runner
171	1796	—	Mazzoni
172	1819	—	Takasugi
173	1826	—	McClintock
174	1860	—	McClintock
175	2120	—	Cedillo
176	2334	—	Baugh
177	2612	—	Migden

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178	2694	—	Pacheco
179	—	478	Haynes
180	—	1129	Sher
181	—	1460	Maddy
182	—	1470	Thompson
183	—	1632	Johnson
184	—	1706	Johnston
185	—	2184	McPherson
186	—	2213	Thompson
187	1531	—	Shelley (Coauthors: Assembly Members Aroner, Baca, Figueroa, Keeley, Knox, Kuehl, Leach, Mazzoni, Morrissey, and Wayne) (Coauthors: Senators Alpert, Lockyer, Solis, and Watson)
188	2418	—	Olberg
189	—	334	Lewis
190	—	1417	Knight
191	—	1709	Haynes
192	135	—	Hertzberg
193	583	—	Davis (Coauthor: Assembly Member Papan)
194	732	—	Granlund
195	2702	—	Aroner
196	2704	—	Alquist (Coauthor: Senator Watson)
197	—	1158	Johannessen
198	—	1532	Kelley
199	—	1533	Committee on Elections and Reapportionment (Senators Karnette (Chair), Craven, Lewis, Polanco, and Rosenthal)
200	—	1556	Kopp
201	—	1608	Ayala (Coauthor: Senator Kopp)
202	—	1640	Brulte
203	—	1650	Kelley
204	—	1710	Polanco (Principal coauthor: Assembly Member Honda) (Coauthor: Assembly Member Cedillo)
205	—	1834	Mountjoy
206	—	1838	Kopp
207	—	1844	Thompson
208	—	1850	Schiff
209	—	1884	Johannessen
210	—	2008	Kelley
211	—	2154	Schiff
212	—	2163	Hughes (Coauthor: Senator Schiff)
213	—	267	Maddy (Coauthor: Senator Solis) (Coauthors: Assembly Members Ashburn and Honda)
214	540	—	Ducheny
215	1377	—	Gallegos
216	1750	—	Pringle
217	2017	—	Takasugi
218	2101	—	Bowler
219	2135	—	Frusetta
220	2236	—	Morrissey (Coauthors: Assembly Members Battin, Bowler, Cunneen, House, Margett, and Scott)
221	2388	—	Leonard and Margett
222	2622	—	Shelley (Coauthors: Assembly Members Aroner, Kuehl, Martinez, Perata, and Scott) (Coauthor: Senator Watson)
223	2083	—	Baugh
224	247	—	Scott
225	913	—	Runner
226	1246	—	Olberg
227	1255	—	Davis
228	1721	—	Cunneen (Coauthors: Assembly Members Alquist and Honda)
229	1837	—	Alquist (Coauthors: Assembly Members Aroner, Knox, Leach, and Perata)
230	1907	—	Woods (Coauthor: Senator Kopp)
231	2099	—	Bowler
232	—	175	Kelley (Coauthors: Assembly Members Cardoza and House)
233	—	678	Leslie
234	—	781	Maddy
235	—	1441	Kopp
236	—	1498	Karnette
237	—	2054	Thompson (Coauthor: Assembly Member Strom-Martin)
238	521	—	Lempert
239	744	—	Washington
240	771	—	Margett
241	1634	—	Ortiz, Escutia, Honda, Knox, Kuehl, Mazzoni, Runner, and Sweeney (Coauthor: Senator Solis)
242	1683	—	Kuykendall (Coauthors: Assembly Members Alby, Alquist, Ashburn, Baugh, Campbell, Cunneen, House, Leach, Machado, Morrissey, and Oller)
243	1703	—	Leach (Coauthor: Assembly Member Ackerman) (Coauthors: Senators Lewis and Rainey)
244	1739	—	Scott
245	1797	—	Davis and Pacheco
246	1825	—	Bowler
247	2230	—	Thompson
248	2285	—	Brown
249	2498	—	Runner
250	2523	—	Ackerman
251	2571	—	Pacheco
252	—	776	Johannessen and Hughes (Coauthors: Assembly Members Campbell, Morrow, Oller, and Woods)
253	—	1360	Alpert, Peace, Solis, and Watson (Coauthors: Assembly Members Alquist, Davis, Havice, Kuehl, Leach, Murray, Pacheco, Thomson, and Wayne)
254	—	2056	Brulte
255	681	—	Machado
256	1382	—	Olberg (Coauthors: Assembly Members Aguiar, Alby, Ashburn, Battin, Bowler, Campbell, Cunneen, Gallegos, Granlund, House, Margett, Miller, Morrissey, Oller, Poochigian, Richter, Thompson, Wayne, and Woods) (Coauthors: Senators Costa, Haynes, Knight, and Leslie)
257	2759	—	Committee on Agriculture (Cardoza (Chair), Battin, Bordonaro, Brown, House, Murray, Prenter, and Thomson)
258	531	—	Knox
259	—	1436	Thompson
260	—	139	Kopp
261	—	1471	McPherson
262	—	1486	Rainey (Coauthor: Assembly Member Perata)
263	—	1662	Ayala
264	—	1716	Calderon
265	—	1813	Kopp
266	—	2150	Peace
267	—	2187	Schiff
268	1871	—	Baca
269	1975	—	Brewer
270	2153	—	Brewer
271	2355	—	Olberg
272	2397	—	Bowen
273	—	452	Maddy
274	—	661	O'Connell
275	—	1483	Ayala
276	—	1514	Solis
277	—	1621	Rosenthal
278	—	1407	Lockyer (Coauthor: Senator Schiff)
279	—	1390	Kopp (Coauthors: Senators Dills, Peace, Polanco, Rainey, and Watson) (Coauthors: Assembly Members Ackerman, Havice, Leach, Machado, Richter, Scott, and Strom-Martin)
280	—	1780	Peace
281	—	1924	McPherson
282	—	2101	Peace
283	—	2005	Kopp
284	—	1729	Thompson
285	471	—	Cardoza (Coauthor: Assembly Member Baugh) (Coauthor: Senator Lee)

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286	1709	—	Alquist (Coauthor: Senator Watson) (Coauthor: Assembly Member Perata)
287	2001	—	Kuehl (Coauthor: Assembly Member Washington)
288	2045	—	Ashburn
289	2218	—	Woods
290	2724	—	Cardenas (Coauthors: Assembly Members Aroner, Knox, Kuehl, and Washington) (Coauthors: Senators Solis and Watson)
291	—	2093	Watson
292	—	2134	Burton
293	1984	—	Miller
294	726	—	Baugh (Principal coauthors: Assembly Members Caldera, Havice, and Napolitano) (Coauthors: Assembly Members Ackerman, Baldwin, Bordonaro, Bowler, Campbell, Margett, Miller, Morrissey, Morrow, Oller, Ortiz, Runner, Thompson, and Woods)
295	921	—	Wayne
296	1640	—	Migden
297	1707	—	Wildman, Cardoza, Lempert, Murray, Papan, Perata, Scott, Sweeney, Villaraigosa, Washington, and Wayne (Coauthors: Senators Kopp, McPherson, O'Connell, Polanco, Rainey, Solis, and Watson)
298	1741	—	Scott
299	2181	—	Firestone and Woods
300	2193	—	Granlund
301	2719	—	Gallegos
302	2734	—	Pacheco
303	2748	—	Mazzoni
304	2775	—	Committee on Budget (Ducheny (Chair), Aroner, Brown, Cardenas, Cardoza, Cedillo, Davis, Gallegos, Keeley, Papan, Scott, Strom-Martin, Torlakson, and Wright)
305	—	1539	Solis
306	—	1630	Rosenthal
307	—	1849	Alpert (Coauthors: Senators Hughes and McPherson) (Coauthor: Assembly Member Leach)
308	—	1936	Johnston
309	—	2111	Costa and Alpert
310	2780	—	Gallegos, Ducheny, and Villaraigosa (Coauthors: Senators Hughes, Polanco, Rosenthal, Sher, Solis, Thompson, Vasconcellos, and Watson)
311	—	933	Thompson (Principal coauthor: Assembly Member Aroner) (Coauthors: Assembly Members Margett and Ortiz)
312	2041	—	Bustamante and Senator Schiff and Assembly Members Villaraigosa and Pacheco (Coauthors: Assembly Members Alquist, Baca, Battin, Bordonaro, Brown, Bowler, Cardenas, Cardoza, Davis, Havice, Honda, Knox, Leach, Machado, Margett, Mazzoni, Migden, Morrissey, Napolitano, Oller, Ortiz, Poochigian, Runner, Scott, Strom-Martin, Sweeney, Vincent, Wayne, Washington, and Wildman) (Coauthors: Senators Alpert, Costa, Hayden, Hughes, Johnston, Karnette, O'Connell, Peace, Polanco, Sher, Solis, and Watson)
313	—	1193	Peace (Coauthor: Senator Alpert) (Coauthors: Assembly Members Alquist, Brewer, Cardoza, Davis, Firestone, Havice, Kuykendall, Machado, Margett, Mazzoni, Morrissey, Pacheco, Prenter, Pringle, Runner, Scott, Strom-Martin, Takasugi, Wayne, and Wildman)
314	—	1628	Maddy (Principal coauthors: Senators Costa and Monteith) (Principal coauthors: Assembly Members Bustamante, House, Poochigian, and Prenter) (Coauthor: Assembly Member Mazzoni)
315	1331	—	Alquist (Principal coauthor: Senator Karnette) (Coauthors: Assembly Members Aroner, Battin, Bordonaro, Bowler, Brewer, Knox, Margett, Morrissey, Perata, Poochigian, Pringle, and Wayne) (Coauthors: Senators Vasconcellos and Watson)
316	2442	—	Mazzoni (Coauthors: Assembly Members Battin, Bordonaro, Bowler, Havice, Margett, Morrissey, Poochigian, and Scott) (Coauthor: Senator Karnette)
317	1756	—	Havice (Principal coauthor: Assembly Member Prenter) (Coauthors: Assembly Members Alquist, Baca, Bordonaro, Cardoza, Cunneen, Davis, Lempert, Machado, Morrissey, Murray, Napolitano, Ortiz, Scott, Strom-Martin, Pringle, Wayne, and Wildman) (Coauthors: Senators Costa, Hughes, and Lockyer)
318	2284	—	Torlakson, Aroner, Davis, Ducheny, Sweeney, Baca, Cardoza, Hertzberg, Machado, Papan, Scott, Strom-Martin, Thomson, Villaraigosa, and Wayne (Coauthors: Assembly Members Alquist, Bustamante, Havice, Honda, Margett, and Perata) (Coauthors: Senators Hughes, Lockyer, Schiff, and Solis)
319	1428	—	Ortiz (Coauthors: Assembly Members Alquist, Cardenas, Cardoza, Davis, Havice, Keeley, Machado, Margett, Murray, Napolitano, Scott, Strom-Martin, Wayne, and Wildman) (Coauthors: Senators Hughes, Karnette, Lockyer, O'Connell, Polanco, Schiff, and Solis)
320	—	1756	Lockyer (Coauthors: Senators Alpert, Karnette, Polanco, Schiff, Solis, and Thompson) (Principal coauthors: Assembly Members Aroner and Davis) (Coauthors: Assembly Members Figueroa, Torlakson, Alquist, Cardoza, Davis, Ducheny, Havice, Machado, Mazzoni, Ortiz, Scott, Strom-Martin, Wayne, Wildman, Aguiar, Baca, Brewer, Bustamante, Cunneen, Frusetta, Honda, Keeley, Leach, Morrissey, Pacheco, Prenter, and Vincent)
321	—	1584	Committee on Budget and Fiscal Review (Coauthors: Assembly Members Mazzoni and Thomson)
322	2797	—	Cardoza (Coauthors: Assembly Members Aguiar, Alquist, Baca, Battin, Baugh, Bordonaro, Bowler, Brewer, Bustamante, Cunneen, Davis, Goldsmith, Granlund, Havice, Honda, Knox, Kuykendall, Leach, Leonard, Machado, Margett, Mazzoni, Morrissey, Napolitano, Olberg, Oller, Ortiz, Pacheco, Prenter, Pringle, Richter, Runner, Scott, Strom-Martin, Takasugi, Thompson, Vincent, Washington, Wayne, and Wildman) (Coauthors: Senators Brulte, Haynes, Hurtt, Johnson, Knight, Lockyer, McPherson, Monteith, Rainey, Schiff, and Sher)
323	2798	—	Machado (Coauthors: Assembly Members Aquiar, Baldwin, Baugh, Bordonaro, Bowler, Brewer, Campbell, Cunneen, Figueroa, Frusetta, Goldsmith, Knox, Kuykendall, Leach, Leonard, Margett, Morrissey, Olberg, Oller, Pacheco, Poochigian, Prenter, Pringle, Richter, and Runner) (Coauthors: Senators Hurtt, Kelley, Knight, Lockyer, McPherson, Monteith, Rainey, and Schiff)
324	1656	—	Ducheny

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325	2261	—	Aguiar and Migden (Coauthors: Assembly Members Baca, Havice, Hertzberg, Strom-Martin, and Washington)
326	2784	—	Strom-Martin and Keeley (Principal coauthor: Senator Thompson) (Coauthors: Assembly Members Ackerman, Aguiar, Alquist, Baca, Battin, Baugh, Bowler, Brewer, Brown, Bustamante, Cardoza, Cunneen, Ducheny, Honda, Kuykendall, Margett, Mazzoni, Morrissey, Napolitano, Pringle, Richter, Scott, Sweeney, Vincent, and Wayne) (Coauthor: Senator Sher)
327	2594	—	Wright (Coauthors: Assembly Members Campbell, Napolitano, Perata, and Washington) (Coauthors: Senators Rainey and Schiff)
328	—	1589	Committee on Budget and Fiscal Review (Coauthor: Senator Knight) (Coauthor: Assembly Member Mazzoni)
329	2779	—	Aroner, Ducheny, and Villaraigosa (Coauthors: Senators Alpert, Lockyer, Solis, Vasconcellos, and Watson)
330	—	1564	Schiff (Coauthors: Senators Hughes and Polanco) (Principal coauthor: Assembly Member Villaraigosa) (Coauthors: Assembly Members Alquist, Cardoza, Davis, Ducheny, Havice, Machado, Mazzoni, Scott, Strom-Martin, Wayne, and Wildman)
331	858	—	Davis
332	862	—	Ducheny (Coauthors: Assembly Members Aguiar, Alquist, Battin, Bordonaro, Bowler, Brewer, Cardoza, Cunneen, Davis, Figueroa, Granlund, Havice, Margett, Machado, Miller, Morrissey, Pacheco, Poochigian, Pringle, Runner, Scott, Strom-Martin, Wayne, and Wildman) (Coauthors: Senators Alpert, O'Connell, Peace, and Thompson)
333	1734	—	Mazzoni
334	—	12	O'Connell and Peace and Assembly Member Davis (Principal coauthor: Senator Schiff) (Coauthors: Senators Alpert, Karnette, Thompson, and Vasconcellos) (Coauthors: Assembly Members Wayne, Alquist, Baca, Bordonaro, Brewer, Brown, Bustamante, Campbell, Cardoza, Cunneen, Ducheny, Frusetta, Havice, Honda, Keeley, Knox, Kuykendall, Machado, Margett, Mazzoni, Migden, Morrissey, Napolitano, Ortiz, Pacheco, Prenter, Pringle, Richter, Scott, Strom-Martin, Sweeney, Takasugi, Villaraigosa, Vincent, and Wildman)
335	—	27	Maddy and Burton (Principal coauthor: Senator Dills) (Principal coauthors: Assembly Members Brown, Margett, and Vincent) (Coauthors: Senators Alpert, Costa, Haynes, Johnson, Knight, and Rosenthal) (Coauthors: Assembly Members Baugh, Bordonaro, Bowler, Brewer, Brown, Granlund, Hertzberg, Kaloogian, Lempert, Machado, Margett, Mazzoni, Migden, Murray, Napolitano, Oller, Papan, Perata, Pringle, Thomson, Vincent, and Wright)
336	—	2064	O'Connell (Coauthors: Senators Alpert, Greene, Hayden, Hughes, and Solis) (Coauthors: Assembly Members Alquist, Cardoza, Davis, Ducheny, Havice, Machado, Mazzoni, Runner, Scott, Strom-Martin, Wayne, and Wildman)
337	—	2223	Committee on Health and Human Services (Senators Watson (Chair), Hughes, Polanco, Solis, Thompson, and Vasconcellos) (Coauthors: Assembly Members Alquist, Aroner, Bowen, Figueroa, Honda, Kuehl, Knox, Strom-Martin, and Washington)
338	—	295	Rainey and Lockyer (Coauthor: Assembly Member Mazzoni)
339	2793	—	Migden and Villaraigosa and Senator Thompson (Coauthors: Assembly Members Alquist, Baca, Cardoza, Davis, Havice, Machado, Ortiz, Scott, Strom-Martin, Wayne, and Wildman) (Coauthors: Senators Costa and Lockyer)
340	346	—	Cunneen
341	1701	—	Alquist and Torlakson (Coauthor: Senator Watson)
342	1933	—	Machado
343	1987	—	Aroner (Coauthor: Assembly Member Washington)
344	2394	—	Margett
345	2573	—	Machado
346	2746	—	Aroner
347	—	440	Maddy
348	—	1836	Johnston
349	—	2047	Lewis
350	—	2231	Committee on Revenue and Taxation (Senators Alpert (Chair), Greene, Karnette, Lee, and McPherson)
351	1614	—	Lempert, Cunneen, Alquist, Bowen, Figueroa, Kaloogian, Perata, Sweeney, and Wayne
352	1848	—	Davis (Coauthor: Assembly Member Figueroa)
353	—	1182	Costa
354	—	1476	Costa
355	—	1482	Rosenthal
356	635	—	Oller
357	983	—	Wayne
358	1731	—	Bowler
359	1844	—	Thompson
360	1964	—	Aguiar
361	1977	—	Campbell
362	2097	—	Margett
363	2090	—	Miller
364	2179	—	Introduced by Special Committee on Assembly Legislative Ethics (Thomson (Democratic Chair), Ackerman (Republican Chair), Lempert, and Machado)
365	2214	—	Aguiar
366	2244	—	Baldwin
367	2578	—	Cardenas
368	2689	—	Miller
369	2747	—	Alquist
370	—	237	Johnson
371	—	302	Costa (Coauthor: Senator McPherson)
372	—	490	Lewis (Principal coauthor: Senator Costa)
373	—	1331	Knight (Coauthor: Assembly Member Escutia)
374	—	1387	Karnette
375	—	1422	Alpert
376	—	1440	Knight
377	—	1443	Knight (Coauthor: Senator Rosenthal) (Coauthor: Assembly Member Runner)
378	—	1475	Thompson (Coauthor: Senator O'Connell)
379	—	1479	Lewis
380	—	1491	Kelley
381	—	1493	Rosenthal
382	—	1521	Alpert
383	—	1542	Knight (Coauthor: Assembly Member Washington)
384	—	1639	O'Connell
385	—	1661	Haynes, Kelley, and Knight (Coauthors: Assembly Members Aguiar, Granlund, and Leonard)
386	—	1718	Calderon
387	—	1851	Kelley (Coauthor: Assembly Member Thompson)
388	—	1940	Peace
389	—	2015	Wright

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Ch. No.	A.B. No.	S.B. No.	Author
390	—	2017	Schiff
391	—	2060	Kopp
392	—	2084	Costa
393	—	1367	Wright (Coauthors: Assembly Members McClintock and Takasugi)
394	—	1738	Kelley
395	—	1794	Schiff
396	—	2099	O'Connell (Coauthor: Assembly Member Bordonaro)
397	1881	—	Thompson (Principal coauthor: Assembly Member Ducheny)
398	2188	—	Scott, Alquist, Aroner, Cedillo, Keeley, Knox, Kuehl, Lempert, Ortiz, and Villaraigosa (Principal coauthor: Senator Hayden) (Coauthors: Senators Alpert and Watson)
399	2761	—	Committee on Agriculture (Cardoza (Chair), Battin, Ducheny, House, Machado, Murray, Prenter, and Thomson)
400	—	1251	Calderon
401	—	1602	Peace (Coauthor: Assembly Member Mazzoni)
402	1951	—	Hertzberg, Cardenas, and Villaraigosa (Coauthors: Assembly Members Kuehl and McClintock) (Principal coauthor: Senator Polanco) (Coauthors: Senators Hayden and Rosenthal)
403	—	1110	Leslie (Coauthors: Senators Haynes and Kopp) (Coauthors: Assembly Members Baldwin, Battin, Campbell, House, Leonard, Margett, Miller, Oller, Prenter, Richter, Runner, and Woods)
404	—	1410	Burton
405	—	1959	Schiff (Coauthors: Senators Craven and Watson) (Coauthors: Assembly Members Havice, House, Margett, Martinez, and Wayne)
406	1590	—	Thomson and Senator Thompson (Coauthors: Assembly Members Aguiar, Baca, Battin, Bordonaro, Bowler, Brewer, Brown, Bustamante, Cardenas, Cardoza, Cunneen, Davis, Escutia, Frusetta, Granlund, Honda, House, Knox, Margett, Mazzoni, Migden, Napolitano, Olberg, Oller, Ortiz, Pacheco, Prenter, Pringle, Richter, Scott, Strom-Martin, Sweeney, Vincent, Wayne, and Woods) (Coauthor: Senator Lockyer)
407	—	50	Greene and Assembly Members Villaraigosa and Olberg (Principal coauthors: Senators Alpert, Johnston, Karnette, and Polanco) (Principal coauthors: Assembly Members Aguiar, Baca, Bustamante, Cardenas, Cardoza, Cedillo, Cunneen, Ducheny, Escutia, Frusetta, Gallegos, Havice, Hertzberg, Keeley, Kuehl, Kuykendall, Leonard, Mazzoni, Migden, Miller, Napolitano, Oller, Prenter, Richter, Scott, Shelley, Takasugi, Torlakson, Washington, Wayne, Wildman, and Woods) (Coauthors: Assembly Members Figueroa, Knox, Perata, Strom-Martin, Vincent, and Wright)
408	—	520	Rainey (Principal coauthors: Assembly Members Runner, Torlakson, and Brown)
409	—	287	Burton and Maddy (Principal coauthor: Assembly Member Cedillo) (Coauthors: Assembly Members Alby, Ashburn, Campbell, Floyd, House, Kuehl, Lempert, Migden, Oller, Richter, Shelley, Thomson, and Woods)
410	—	149	Rainey
411	—	165	Solis
412	—	529	Johnson (Principal coauthor: Assembly Member Pringle)
413	—	831	Karnette
414	—	1404	Johnston (Coauthor: Assembly Member Machado)
415	—	1413	Knight
416	—	1489	Johnson
417	—	1741	Alpert
418	—	1790	Rosenthal
419	—	1945	Karnette
420	—	2230	Committee on Revenue and Taxation (Senators Alpert (Chair), Greene, Karnette, Lee, and McPherson)
421	2671	—	Migden (Coauthor: Senator Lewis)
422	—	1156	Costa
423	518	—	Brown
424	2415	—	Brown
425	2369	—	Wayne and Hertzberg (Coauthors: Assembly Members Cardoza, Escutia, Murray, and Olberg)
426	2697	—	Ducheny
427	1888	—	Honda (Coauthor: Assembly Member Sweeney) (Coauthor: Senator Vasconcellos)
428	2428	—	Knox and Takasugi (Coauthor: Senator Solis)
429	—	1386	Leslie (Principal coauthor: Assembly Member Runner) (Coauthors: Assembly Members Alquist, Campbell, Goldsmith, House, and Leach)
430	871	—	Wayne
431	1625	—	Richter
432	1944	—	Runner
433	1972	—	Knox
434	1998	—	Thomson (Coauthors: Assembly Members Cardoza, Keeley, and Strom-Martin) (Coauthors: Senators Costa, Johannessen, Kelley, McPherson, and Monteith)
435	2543	—	Torlakson
436	2252	—	House and Cardoza
437	—	1852	Kelley
438	—	1898	Polanco
439	—	1956	Hayden
440	204	—	Migden (Coauthor: Assembly Member Shelley)
441	1204	—	Keeley (Coauthor: Senator McPherson)
442	1570	—	Bustamante
443	1569	—	Committee on Labor and Employment (Floyd (Chair), Escutia, Havice, Knox, Martinez, and Washington)
444	1688	—	Torlakson
445	1810	—	Davis
446	1872	—	Baca (Coauthors: Assembly Members Davis, Havice, Machado, Morrissey, Perata, Washington, and Woods)
447	2319	—	Knox
448	—	453	Solis (Principal coauthor: Senator Calderon) (Coauthor: Assembly Member Wildman)
449	—	1667	Burton
450	—	1991	O'Connell
451	—	2021	Schiff
452	75	—	Alby
453	218	—	Takasugi and Alquist
454	231	—	Honda
455	1074	—	Papan
456	1115	—	Knox (Coauthor: Assembly Member Havice) (Coauthor: Senator Rainey)
457	1225	—	Granlund (Coauthor: Senator Kopp)
458	1389	—	Perata
459	1650	—	Richter (Principal coauthor: Assembly Member Bowen)
460	1695	—	Knox
461	1736	—	Torlakson (Coauthor: Assembly Member Thomson)
462	1886	—	Thompson
463	1906	—	Brewer
464	1928	—	Morrow
465	1973	—	Campbell and Baca
466	1980	—	Brewer
467	2002	—	Kuykendall and Cunneen (Coauthor: Assembly Member Alquist)
468	2008	—	Woods

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469	2039	—	Baugh (Coauthors: Assembly Members Alby, Bowler, Campbell, Cunneen, House, Margett, Oller, Richter, Thompson, and Washington) (Coauthors: Senators Haynes and Leslie)
470	2052	—	Firestone and Pringle
471	2062	—	Cardenas
472	2066	—	Sweeney (Coauthor: Senator Karnette)
473	2134	—	Escutia (Coauthors: Assembly Members Aroner, Figueroa, Havice, Hertzberg, Keeley, Kuehl, Migden, and Ortiz) (Coauthors: Senators Karnette and Watson)
474	2141	—	Hertzberg
475	2268	—	Leach
476	2320	—	Bordonaro (Coauthors: Assembly Members Alby, Bowler, Campbell, Cunneen, House, Leach, Richter, and Takasugi)
477	2353	—	Olberg
478	2372	—	Committee on Public Safety (Perata (Chair), Bowler, Cunneen, Hertzberg, House, Murray, Napolitano, and Washington)
479	2401	—	Shelley
480	2509	—	Napolitano
481	2519	—	Poochigian and Pringle (Coauthor: Senator McPherson)
482	2581	—	Cardoza, Alquist, Havice, Honda, House, Lempert, Margett, Martinez, Morrissey, Oller, and Wayne (Coauthors: Senators Costa, Lee, Leslie, Solis, and Watson)
483	2583	—	Shelley
484	2650	—	Cardenas (Principal coauthor: Assembly Member Washington) (Coauthor: Assembly Member Hertzberg)
485	2803	—	Committee on Judiciary (Escutia (Chair), Alby, Aroner, Baugh, Figueroa, Hertzberg, Keeley, Kuehl, Morrow, Ortiz, and Pacheco)
486	—	459	Kelley
487	—	1176	Johnson
488	—	1374	Leslie (Coauthors: Senators Craven, Haynes, Knight, Kopp, and Rainey) (Coauthors: Assembly Members Alby, Goldsmith, Leach, Napolitano, and Thomson)
489	—	1427	Rainey
490	—	1692	McPherson
491	—	1764	Karnette (Coauthor: Assembly Member Frusetta)
492	—	1792	Mountjoy
493	—	1964	Costa
494	—	2024	Rainey
495	—	2051	Costa
496	—	2081	Schiff
497	—	2233	Committee on Revenue and Taxation (Senators Alpert (Chair), Greene, Karnette, Lee, and McPherson)
498	743	—	Washington
499	2796	—	Wright and Baca and Senator Schiff (Principal coauthors: Assembly Members Migden and Aguiar) (Coauthors: Assembly Members Cardoza, Alby, Ashburn, Baldwin, Battin, Bordonaro, Brewer, Cunneen, Frusetta, Granlund, Kuykendall, Leach, Miller, Morrissey, Pacheco, Poochigian, Prenter, Pringle, Richter, Runner, Thompson, and Woods) (Principal coauthors: Senators Alpert, Vasconcellos, Costa, Thompson, Lockyer, Rainey, and McPherson) (Coauthors: Senators Peace and Karnette)
500	—	491	Brulte and Vasconcellos (Principal Coauthor: Senator Polanco) (Principal Coauthors: Assembly Members Aguiar and Migden) (Coauthors: Senators Lockyer, Rainey, and Rosenthal) (Coauthors: Assembly Members Baca, Battin, Cunneen, Goldsmith, Granlund, Knox, Olberg, Pacheco, Scott, and Washington)
501	—	1485	Rosenthal (Principal coauthor: Senator Rainey) (Coauthor: Senator McPherson) (Coauthors: Assembly Members Hertzberg, Migden, Papan, Strom-Martin, Sweeney, and Thomson)
502	—	2108	Vasconcellos and Brulte (Principal coauthor: Senator Polanco) (Principal coauthors: Assembly Members Aguiar and Migden) (Coauthors: Senators Lockyer, Rainey, and Rosenthal) (Coauthors: Assembly Members Baca, Battin, Cunneen, Goldsmith, Granlund, Knox, Olberg, Pacheco, Scott, and Washington)
503	—	2082	Johnston
504	469	—	Cardoza
505	745	—	Thompson (Coauthor: Senator Polanco)
506	966	—	Ackerman
507	1770	—	Kuykendall
508	1785	—	Murray (Coauthor: Assembly Member Kuehl) (Coauthors: Senators Solis and Watson)
509	1801	—	Davis
510	1869	—	Cardoza and Senator Monteith (Principal coauthors: Assembly Members Cardenas, Figueroa, Honda, Keeley, Mazzoni, Ortiz, Prenter, and Strom-Martin)
511	1900	—	Cardenas (Coauthor: Senator Alpert)
512	1922	—	Firestone
513	2006	—	Keeley
514	2292	—	Ackerman
515	2303	—	Runner
516	—	28	Maddy
517	—	559	Wright
518	—	663	Rosenthal
519	—	1385	Alpert
520	—	1480	Kopp
521	—	1654	Johnston
522	—	1679	Kopp
523	—	1951	Brulte (Principal coauthor: Assembly Member Cedillo) (Coauthor: Assembly Member Villaraigosa)
524	—	1965	Peace
525	—	2028	McPherson
526	2321	—	Knox (Coauthor: Senator Vasconcellos)
527	17	—	Cardoza
528	1782	—	Strom-Martin (Principal coauthor: Assembly Member Brown)
529	2049	—	Firestone
530	2096	—	Margett
531	2440	—	Oller (Coauthor: Assembly Member Margett) (Coauthor: Senator Peace)
532	2487	—	Oller
533	2647	—	Pacheco
534	2716	—	Martinez
535	2756	—	Committee on Agriculture (Cardoza (Chair), Battin, Bordonaro, Brown, Ducheny, House, Murray, Prenter, and Thomson)
536	—	86	Monteith (Coauthor: Assembly Member House)
537	—	120	Committee on Local Government (Senators Craven (Chair), Ayala, Calderon, Johnston, Kopp, Rainey, and Watson)
538	—	1381	Committee on Local Government (Senators Craven (Chair), Ayala, Johnston, Kopp, Polanco, Rainey, and Watson)
539	—	1439	Brulte
540	—	1707	Rainey
541	—	1817	Johnston and Johnson
542	—	2095	Polanco
543	—	2141	O'Connell
544	2730	—	Mazzoni, Lempert, and Scott (Coauthor: Senator Alpert)
545	496	—	Lempert

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Ch. No.	A.B. No.	S.B. No.	Author
546	2528	—	Ducheny
547	1620	—	Scott (Principal coauthor: Assembly Member Pacheco)
548	—	2042	Alpert and Assembly Member Mazzoni (Coauthor: Senator Hughes) (Coauthors: Assembly Members Alquist, Honda, Strom-Martin, and Washington)
549	—	469	Rainey (Principal coauthor: Assembly Member Morrow) (Coauthors: Senators Costa, Johnson, Karnette, Leslie, Monteith, and Schiff) (Coauthors: Assembly Members Baldwin, Battin, Bowler, Campbell, House, Knox, Martinez, Olberg, Oller, Prenter, Richter, and Wayne)
550	2799	—	Olberg
551	2649	—	Figueroa (Coauthors: Assembly Members Lempert, Martinez, Murray, and Wayne) (Coauthor: Senator Lee)
552	2055	—	Gallegos (Coauthor: Assembly Member Havice)
553	123	—	Wildman
554	—	7	Kopp
555	—	1734	Johnston
556	—	1948	Sher (Coauthors: Assembly Members Figueroa and Martinez)
557	—	2202	Haynes
558	164	—	Knox
559	1865	—	Wildman (Coauthors: Assembly Members Cardenas, Havice, Napolitano, and Scott) (Coauthors: Senators Lockyer, Schiff, and Watson)
560	1851	—	Wayne (Coauthors: Assembly Members Cunneen, Figueroa, Goldsmith, Lempert, Murray, and Torlakson)
561	1880	—	Papan (Coauthor: Senator Kopp)
562	—	218	Knight
563	—	1462	Mountjoy and Schiff (Principal coauthors: Assembly Members Baca and Kaloogian)
564	—	1510	Polanco (Coauthor: Assembly Member Murray)
565	—	1696	Alpert
566	—	2222	Watson
567	623	—	Machado (Coauthor: Assembly Member Woods)
568	898	—	Napolitano (Coauthors: Assembly Members Alquist, Mazzoni, Perata, Richter, Takasugi, and Wayne) (Coauthors: Senators Dills, Hughes, Karnette, Rosenthal, Vasconcellos, and Watson)
569	1838	—	Kuykendall (Principal coauthors: Assembly Members Margett and Olberg) (Coauthors: Assembly Members Alquist, Alby, Ashburn, Baldwin, Battin, Cunneen, Havice, House, Kaloogian, Knox, Leach, Morrissey, Prenter, Scott, Thompson, and Woods) (Coauthors: Senators Kopp, Peace, and Solis)
570	1915	—	Honda, Baca, Cedillo, Migden, and Shelley (Coauthors: Assembly Members Alquist, Aroner, Hertzberg, Lempert, Martinez, Perata, and Washington) (Coauthors: Senators Dills, Lee, Lockyer, Polanco, Solis, Vasconcellos, and Watson)
571	2301	—	Wright
572	2310	—	Wright
573	2341	—	Committee on Agriculture (Cardoza (Chair), Battin, Bordonaro, Brown, Frusetta, House, Machado, Prenter, and Thomson)
574	2493	—	Bustamante (Coauthors: Assembly Members Napolitano and Takasugi)
575	2760	—	Committee on Agriculture (Cardoza (Chair), Battin, Bordonaro, Brown, Ducheny, House, Machado, Murray, Prenter, and Thomson)
576	2769	—	Committee on Agriculture (Cardoza (Chair), Brown, Ducheny, Machado, Murray, and Thomson)
577	1187	—	Knox, Davis, Shelley, Strom-Martin, and Wildman
578	1338	—	Alquist (Coauthors: Assembly Members Honda, Kuehl, Scott, and Shelley) (Principal coauthor: Assembly Member Washington) (Coauthor: Senator Rosenthal)
579	1635	—	Migden
580	2063	—	Cardenas
581	2801	—	Committee on Judiciary (Escutia (Chair), Alby, Aroner, Baugh, Figueroa, Hertzberg, Kaloogian, Keeley, Kuehl, Martinez, Morrow, Ortiz, Pacheco, and Shelley)
582	—	117	Kelley
583	—	1103	Alpert
584	—	1075	Johnston (Coauthors: Assembly Members Machado, Thomson, and Torlakson) (Coauthor: Senator Rainey)
585	—	1555	Rosenthal
586	—	1615	Lockyer (Coauthor: Senator Alpert) (Coauthor: Assembly Members Perata and Wayne)
587	—	1768	Kopp (Coauthors: Senators Ayala, McPherson, and Rainey)
588	—	1793	Greene
589	—	1983	Greene (Principal coauthor: Senator Polanco)
590	—	2227	Monteith
591	—	2237	Committee on Revenue and Taxation (Senators Alpert (Chair), Greene, Karnette, Knight, Lee, and McPherson)
592	417	—	Davis (Principal coauthor: Senator McPherson) (Coauthors: Assembly Members Cardenas, Knox, Kuehl, Machado, Martinez, Mazzoni, Murray, Scott, Strom-Martin, and Wayne) (Coauthors: Senators Johnston, Leslie, and Watson)
593	570	—	Battin and Leonard (Principal coauthor: Assembly Member Prenter) (Coauthor: Senator Peace)
594	1392	—	Scott (Coauthor: Assembly Member Hertzberg) (Coauthors: Senators Peace and Schiff)
595	1830	—	Davis
596	2035	—	Cardenas
597	2459	—	Campbell
598	—	272	Brulte
599	—	597	Peace
600	—	619	Peace
601	—	1250	Kopp
602	—	1416	Brulte, Haynes, Hurtt, Kelley, McPherson, and Peace (Coauthors: Assembly Members Alby, Ashburn, Baldwin, Baugh, Cunneen, Goldsmith, Granlund, Kaloogian, Leach, Margett, Murray, Olberg, Oller, Ortiz, Pacheco, Richter, Shelley, and Woods)
603	—	1469	Knight
604	—	1660	Lewis
605	—	1767	Burton
606	—	1880	Committee on Public Safety (Senators Vasconcellos (Chair), Burton, Kopp, McPherson, Polanco, Rainey, Schiff, and Watson)
607	—	2004	Kelley
608	—	2039	Lockyer
609	—	2232	Committee on Revenue and Taxation (Senators Alpert (Chair), Greene, Karnette, Lee, and McPherson)
610	425	—	Baldwin and Kaloogian

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Ch. No.	A.B. No.	S.B. No.	Author
611	508	—	Takasugi
612	821	—	Takasugi
613	1384	—	Havice, Baca, Lempert, and Napolitano (Principal coauthor: Assembly Member Escutia) (Coauthor: Assembly Member Ortiz) (Coauthors: Senators Karnette, McPherson, Schiff, and Watson)
614	1705	—	Torlakson (Coauthors: Assembly Members Hertzberg and Napolitano)
615	1986	—	Migden
616	2145	—	Pacheco
617	2173	—	Pacheco
618	—	19	Lockyer
619	—	29	Maddy
620	—	143	Kopp
621	—	155	Kelley
622	—	266	Rosenthal
623	—	1383	Leslie and Haynes (Coauthor: Assembly Member Aguiar)
624	—	1430	Solis
625	—	1663	O'Connell (Principal coauthor: Assembly Member Cunneen) (Coauthors: Senators Leslie, Solis, and Vasconcellos) (Coauthors: Assembly Members Aroner, Cedillo, Davis, Kuehl, Leach, Lempert, Machado, Mazzoni, Thomson, Villaraigosa, and Wildman)
626	—	1666	Solis (Coauthors: Senators Alpert, Craven, Hayden, Hughes, Lee, O'Connell, Vasconcellos, and Watson) (Coauthors: Assembly Members Cardenas, Davis, Gallegos, Honda, Kuehl, Martinez, Perata, and Washington)
627	—	1752	Hughes and Solis (Coauthors: Assembly Members Honda, Keeley, Villaraigosa, and Washington)
628	—	1781	Peace
629	—	1878	Kopp (Principal coauthor: Senator Schiff)
630	—	1927	Schiff
631	—	2034	Lockyer (Coauthor: Assembly Member Frusetta)
632	—	2055	Costa (Principal coauthor: Senator Rainey)
633	—	2217	O'Connell
634	—	1138	Johannessen
635	1342	—	Napolitano (Principal coauthor: Assembly Member Havice) (Coauthors: Assembly Members Aguiar and Miller) (Coauthor: Senator Karnette)
636	1789	—	Mazzoni (Coauthor: Senator Burton)
637	1953	—	Baca (Principal coauthor: Assembly Member Papan) (Coauthors: Assembly Members Bustamante, Cardenas, Ducheny, Gallegos, Honda, Keeley, Knox, Margett, Martinez, Murray, Vincent, Washington, Wayne, and Wright) (Coauthors: Senators Hayden, Karnette, Lee, Peace, Solis, Vasconcellos, and Watson)
638	2061	—	Granlund
639	2416	—	Committee on Governmental Organization (Brown (Chair), Bordonaro, Brewer, Cardenas, Cardoza, Floyd, Granlund, Margett, Pringle, and Wright)
640	2473	—	Strom-Martin
641	—	1554	Kopp
642	—	1648	Wright
643	—	1664	Sher
644	—	1760	Haynes (Coauthor: Senator Kopp)
645	—	1989	Polanco
646	80	—	Ducheny
647	162	—	Alby
648	734	—	Brown and Migden
649	911	—	Knox
650	1133	—	Gallegos (Coauthor: Assembly Member Keeley)
651	1134	—	Machado
652	1397	—	Gallegos and Honda (Coauthors: Assembly Members Baca, Cardenas, Knox, Kuehl, Machado, Murray, and Villaraigosa) (Coauthors: Senators Polanco, Vasconcellos, and Watson)
653	1624	—	Figueroa
654	1733	—	Machado (Coauthors: Assembly Members Alquist, Scott, and Wayne) (Coauthor: Senator Costa)
655	1857	—	Escutia
656	1916	—	Torlakson
657	1921	—	Scott
658	1959	—	Gallegos
659	2023	—	Gallegos (Principal coauthor: Assembly Member Margett) (Coauthor: Assembly Member Washington)
660	2155	—	Keeley and Gallegos
661	2674	—	Cardenas
662	2707	—	Perata (Coauthor: Assembly Member Miller) (Coauthors: Senators McPherson and Polanco)
663	—	405	Peace
664	—	567	Schiff and Assembly Member Escutia (Coauthor: Assembly Member Scott)
665	—	1389	Craven
666	—	1524	Alpert
667	—	1987	Craven, Ayala, Dills, Karnette, McPherson, O'Connell, Sher, and Solis (Coauthors: Assembly Members Alquist, Brown, Granlund, Honda, Kaloogian, Morrow, and Sweeney)
668	—	2189	Vasconcellos (Principal coauthor: Assembly Member Kuykendall)
669	1077	—	Cardoza (Principal coauthor: Assembly Member Lempert) (Coauthors: Assembly Members Havice, Kuehl, Murray, and Ortiz) (Coauthor: Senator Schiff)
670	1692	—	Bowen
671	1096	—	Martinez
672	284	—	Baca
673	2417	—	Mazzoni
674	2758	—	Committee on Agriculture (Cardoza (Chair), Battin, Bordonaro, Brown, Ducheny, Frusetta, House, Machado, Murray, Prenter, and Thomson)
675	—	1824	Calderon
676	—	2172	Sher
677	972	—	Torlakson
678	1166	—	House
679	1859	—	Ackerman
680	1879	—	Prenter
681	1963	—	Aguiar
682	2069	—	Kaloogian
683	2347	—	House and Baugh
684	2453	—	Campbell
685	2580	—	Baca (Coauthors: Assembly Members Bordonaro, Campbell, Honda, Knox, Kuehl, and Runner) (Coauthors: Senators Solis and Watson)
686	2682	—	Thomson
687	—	281	Thompson (Coauthor: Assembly Member Brown)
688	—	858	Lewis
689	—	1362	Committee on Housing and Land Use (Senators Lee (Chair), Costa, Kopp, Monteith, and Vasconcellos)
690	—	1835	Johnston
691	—	1686	Solis
692	—	1970	Schiff
693	—	1988	Craven (Principal coauthor: Assembly Member Morrow) (Coauthors: Senators Ayala and O'Connell)
694	—	2147	Brulte
695	—	2235	Committee on Revenue and Taxation (Senators Alpert (Chair), Greene, Karnette, Knight, Lee, and McPherson)
696	1332	—	Murray (Coauthor: Senator Thompson)
697	535	—	Brown
698	1201	—	Murray

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699	1767	—	Havice (Coauthors: Assembly Members Murray and Shelley) (Coauthors: Senators Solis and Watson)
700	1803	—	Lempert
701	2172	—	Sweeney (Coauthors: Assembly Members Alquist, Aroner, Baca, Baldwin, Brown, Cardoza, Figueroa, Knox, Kuehl, Leach, Ortiz, Washington, and Woods) (Coauthors: Senators Alpert, Solis, Vasconcellos, and Watson)
702	2177	—	Kuehl (Coauthors: Assembly Members Aroner, Bowen, Keeley, Knox, Leach, Lempert, Machado, Mazzoni, Ortiz, and Strom-Martin) (Coauthors: Senators Alpert, Lockyer, Solis, and Watson)
703	2700	—	Kuehl
704	2745	—	Cardoza (Principal coauthor: Assembly Member Kuehl)
705	2386	—	Bordonaro, Ackerman, Alby, Ashburn, Morrissey, and Runner (Coauthors: Assembly Members Campbell, Cunneen, Granlund, Leach, Margett, McClintock, Oller, and Richter) (Coauthors: Senators Costa, Haynes, Peace, and Rainey)
706	—	326	Leslie and Assembly Member Hertzberg (Principal coauthor: Assembly Member Kuehl) (Coauthors: Assembly Members Bustamante and Frusetta)
707	—	1682	Solis
708	1875	—	Prenter
709	1910	—	Ashburn (Coauthor: Assembly Member Prenter)
710	2390	—	House
711	2426	—	Strom-Martin (Principal coauthors: Assembly Members Cardoza and Oller) (Coauthor: Assembly Member Frusetta)
712	2633	—	Murray
713	—	1712	McPherson and Assembly Member Keeley (Coauthors: Senators O'Connell and Thompson) (Coauthors: Assembly Members Migden, Shelley, and Woods)
714	—	1947	Lockyer (Coauthor: Assembly Member Hertzberg)
715	466	—	Campbell (Coauthor: Assembly Member Baugh)
716	789	—	Cardenas (Coauthor: Assembly Member Frusetta) (Coauthor: Senator Hughes)
717	947	—	Gallegos (Coauthors: Assembly Members Alquist, Baldwin, Bordonaro, Kaloogian, and Woods) (Coauthors: Senators Alpert and Rainey)
718	1233	—	Leach (Coauthors: Assembly Members Alquist, Bowler, Campbell, Cunneen, Granlund, House, Margett, Martinez, Morrissey, and Runner) (Coauthor: Senator Haynes)
719	1892	—	Wayne
720	1978	—	Campbell
721	2207	—	Escutia
722	2465	—	Scott
723	2569	—	Kuehl
724	2699	—	Pringle
725	2732	—	Miller
726	—	55	Kopp
727	—	270	Peace
728	—	1073	Vasconcellos
729	—	1361	Alpert, Costa, and Lockyer (Coauthors: Assembly Members Alquist, Aroner, Baca, Davis, Kuehl, Lempert, Machado, Mazzoni, Morrow, Richter, Washington, and Woods)
730	—	1405	Polanco and Lee (Principal coauthors: Senator Sher and Assembly Member Aroner) (Coauthors: Senators Monteith and Vasconcellos) (Coauthors: Assembly Members Lempert, Prenter, and Vincent)
731	—	1645	Mountjoy
732	—	1683	Rosenthal and Burton
733	—	1823	Kelley
734	—	1896	Peace and Assembly Member Ducheny
735	—	1973	Maddy (Principal coauthor: Assembly Member Mazzoni)
736	—	1981	Greene
737	—	2014	Schiff (Principal coauthor: Assembly Member Machado)
738	—	2098	Wright
739	—	2166	Costa (Coauthor: Assembly Member Brewer)
740	—	1890	Hurtt and Haynes (Coauthors: Assembly Members Battin, Bowler, Campbell, Cunneen, Leach, Margett, Olberg, Oller, Richter, and Runner)
741	89	—	Pringle
742	1626	—	Wayne, Alquist, Frusetta, and Leach (Principal coauthor: Assembly Member Baldwin) (Coauthors: Assembly Members Bowler, Brewer, Campbell, House, Kuykendall, Leonard, Miller, Morrissey, Pacheco, Prenter, Richter, and Runner) (Coauthors: Senators Lockyer, Vasconcellos, and Watson)
743	1639	—	Sweeney, Baldwin, Granlund, Honda, Keeley, Knox, Lempert, Machado, Pacheco, Perata, Scott, Shelley, Strom-Martin, Thomson, Villaraigosa, and Wayne and Senator Polanco (Coauthors: Assembly Members Kuykendall, Miller, Morrissey, Prenter, and Runner)
744	2741	—	Miller (Principal coauthor: Senator Ayala) (Coauthors: Assembly Members Alquist, Baca, Davis, Honda, Kuehl, Lempert, Mazzoni, Morrissey, Shelley, Torlakson, and Washington) (Coauthors: Senators Alpert, Haynes, Kopp, and Peace)
745	—	1626	Hughes
746	—	1627	Hughes
747	1856	—	Vincent (Coauthor: Assembly Member Strom-Martin)
748	2154	—	Pacheco
749	2456	—	Sweeney, Cardoza, Knox, Strom-Martin, Machado, and Brown (Coauthors: Assembly Members Alquist, Aroner, Baca, Havice, Honda, Keeley, Kuehl, Lempert, Mazzoni, Ortiz, Perata, Scott, Shelley, Thomson, and Villaraigosa) (Coauthors: Senators Costa, Hughes, Lockyer, McPherson, Thompson, and Watson)
750	2687	—	Gallegos
751	—	1659	Kopp (Principal coauthor: Assembly Member Shelley) (Coauthors: Assembly Members Murray, Kuehl, Perata, and Washington)
752	—	1785	Hayden (Coauthor: Senator O'Connell)
753	—	2103	Haynes (Coauthors: Assembly Members Oller and Thomson)
754	357	—	Havice
755	377	—	Baugh (Principal coauthor: Senator Burton)
756	762	—	Torlakson (Coauthor: Assembly Member Richter)
757	976	—	Papan (Coauthors: Assembly Members Cardoza, Lempert, and Scott)
758	1788	—	Wright
759	—	1600	Rainey (Coauthor: Assembly Member Wildman)
760	—	1690	Rainey (Coauthor: Senator Lockyer)
761	—	2074	Schiff
762	271	—	Villaraigosa (Principal coauthor: Assembly Member Leonard) (Coauthor: Assembly Member Prenter)
763	1792	—	Havice (Coauthors: Assembly Members Alquist, Leach, and Washington) (Principal coauthor: Senator Leslie) (Coauthors: Senators Costa and Dills)
764	92	—	Cardoza

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765	576	—	Baldwin
766	604	—	Kuykendall and Floyd
767	1655	—	Wright
768	2056	—	Floyd
769	2251	—	Honda (Coauthors: Assembly Members Brown, Leach, and Washington) (Coauthor: Senator Watson)
770	2342	—	Cunneen
771	2452	—	Leach
772	2597	—	Murray
773	—	485	Craven (Principal coauthor: Assembly Member Washington) (Coauthors: Senators McPherson, O'Connell, and Sher) (Coauthors: Assembly Members Alquist, Figueroa, Honda, Morrow, and Sweeney)
774	—	913	Kelley
775	—	998	Burton (Principal coauthor: Assembly Member Aguiar)
776	—	1535	Kopp
777	—	1546	Johnson
778	—	1606	Lewis
779	—	1759	Ayala
780	—	1855	Thompson
781	—	1885	Ayala
782	—	1934	Johnston (Coauthor: Assembly Member Ortiz)
783	—	1997	Johnson (Coauthors: Senators Costa, Craven, Haynes, Hurtt, Kopp, Lewis, Maddy, Monteith, and Rainey) (Coauthors: Assembly Members Alby, Baldwin, Baugh, Campbell, Cunneen, House, Leach, Margett, Morrissey, Morrow, Oller, Pringle, Richter, and Runner)
784	—	2023	Alpert
785	—	2030	Costa (Principal coauthor: Assembly Member Aroner) (Coauthor: Senator Solis) (Coauthors: Assembly Members Ashburn, Kuehl, Machado, Migden, Thomson, Washington, and Woods)
786	—	2215	Lockyer
787	7	—	Brown (Principal coauthor: Assembly Member Figueroa) (Coauthors: Assembly Members Alquist, Aroner, Cardoza, Ducheny, Gallegos, Havice, Keeley, Kuehl, Lempert, Napolitano, Perata, Washington, and Wayne) (Coauthor: Senator Watson)
788	1621	—	Figueroa and Leach (Principal coauthor: Assembly Member Thomson) (Principal coauthor: Senator Maddy) (Coauthors: Assembly Members Bordonaro, Cunneen, and Kuehl) (Coauthor: Senator Watson)
789	2693	—	Migden and Thomson (Coauthors: Assembly Members Granlund and Runner)
790	2003	—	Strom-Martin (Coauthor: Assembly Member Pacheco)
791	—	1140	Committee on Health and Human Services (Senators Watson (Chair), Hughes, Polanco, Solis, Thompson, and Vasconcellos) (Coauthors: Assembly Members Gallegos, Migden, and Thomson)
792	1613	—	Scott and Strom-Martin (Principal coauthor: Assembly Member Lempert) (Coauthors: Assembly Members Aguiar, Alquist, Cardenas, Davis, Figueroa, Firestone, Hertzberg, Keeley, Machado, Mazzoni, Morrissey, Prenter, Sweeney, Villaraigosa, Wildman, and Wright) (Coauthors: Senators Costa, Karnette, Schiff, and Solis)
793	2216	—	Escutia, Cedillo, Migden, and Villaraigosa (Coauthors: Assembly Members Alquist, Baca, Davis, Kuehl, Mazzoni, Murray, Pacheco, Perata, Scott, Shelley, Strom-Martin, Washington, and Wayne) (Coauthors: Senators Alpert, Hayden, Lee, Polanco, Solis, and Watson)
794	2363	—	Honda (Principal coauthors: Assembly Members Brown, Ducheny, and Morrow) (Coauthors: Assembly Members Baca, Cunneen, and Pacheco) (Coauthors: Senators Alpert, Costa, Solis, Thompson, and Watson)
795	—	1697	Hayden (Principal coauthor: Assembly Member Pacheco) (Coauthors: Senators Hughes, Lee, Solis, and Watson) (Coauthors: Assembly Members Aroner, Bowen, Escutia, Prenter, Honda, Murray, Shelley, Villaraigosa, and Washington)
796	438	—	Torlakson (Coauthor: Senator Kopp)
797	1182	—	Keeley
798	1374	—	Hertzberg
799	1424	—	Martinez
800	1453	—	Cardenas
801	1761	—	Sweeney
802	1994	—	Bowen
803	1292	—	Migden, Villaraigosa, and Pacheco
804	2088	—	Floyd
805	2536	—	Poochigian (Principal coauthors: Assembly Members Mazzoni and Pacheco) (Coauthor: Assembly Member Davis)
806	2611	—	Kuehl
807	2637	—	Mazzoni (Coauthors: Assembly Members Aroner and Kuehl) (Coauthors: Senators Lee and Watson)
808	2737	—	Aroner, Honda, Knox, Kuehl, Perata, Strom-Martin, and Washington (Coauthors: Senators Lee and Watson)
809	2755	—	Alquist (Coauthor: Assembly Member Strom-Martin) (Coauthors: Senators Alpert, Solis, and Watson)
810	—	1832	Kelley (Coauthor: Senator Hughes)
811	—	2241	Brulte
812	—	133	Kelley
813	—	1765	Peace (Coauthors: Senators Kelley and Polanco) (Coauthors: Assembly Members Davis, Ducheny, Hertzberg, Thompson, Villaraigosa, and Wayne)
814	1957	—	Knox
815	2075	—	Granlund
816	2273	—	Woods (Coauthor: Assembly Member Thomson)
817	2352	—	Woods
818	2366	—	Cedillo and Keeley (Coauthors: Assembly Members Alquist, Aroner, Gallegos, Honda, Kuehl, Machado, Martinez, Murray, Ortiz, Perata, and Shelley) (Coauthors: Senators Lee and Watson)
819	—	256	Costa
820	2472	—	Leonard
821	2505	—	Olberg and Machado (Principal coauthor: Senator Kopp)
822	—	983	Polanco and Rainey
823	—	1522	Rainey (Coauthors: Senators Dills, Hughes, McPherson, and Watson)
824	2595	—	Baugh
825	—	1796	Leslie (Principal coauthor: Assembly Member Hertzberg) (Coauthor: Senator Hurtt) (Coauthors: Assembly Members Alby, Baldwin, Bowler, Campbell, Cunneen, House, Leach, Lempert, Margett, Oller, and Richter)
826	2351	—	Hertzberg (Principal coauthor: Senator Leslie) (Coauthors: Assembly Members Alquist, Cunneen, Figueroa, Honda, Knox, Kuehl, Lempert, Napolitano, Perata, Scott, Shelley, Sweeney, and Washington)
827	—	1624	Lewis
828	—	1637	Committee on Transportation (Senators Kopp (Chair), Ayala, Costa, Karnette, Kelley, Monteith, Polanco, and Rainey)

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829	—	1652	Kopp
830	—	2044	Rainey
831	—	2194	Wright
832	—	2224	Alpert
833	2816	—	Baugh (Coauthor: Assembly Member Migden)
834	2729	—	Alquist (Coauthors: Assembly Members Figueroa, Honda, Lempert, and Prenter) (Coauthor: Senator Vasconcellos)
835	—	750	Rosenthal
836	—	955	Rosenthal
837	—	956	Rosenthal
838	—	1702	Rosenthal
839	—	2020	Karnette
840	2102	—	Alby and Ortiz (Coauthors: Assembly Members Aguiar, Bordonaro, Bowler, Cardenas, Cunneen, Gallegos, Knox, Leach, Machado, Margett, Morrissey, Oller, Runner, Scott, and Strom-Martin) (Coauthors: Senators Monteith, Solis, and Watson)
841	2506	—	Battin
842	—	1700	Hayden and Assembly Member Villaraigosa (Principal coauthor: Assembly Member Hertzberg) (Coauthors: Assembly Members Murray and Thomson)
843	—	1827	Monteith
844	1339	—	Knox
845	1763	—	Mazzoni (Coauthors: Assembly Members Baca, Davis, Kuehl, Migden, Perata, and Washington) (Coauthor: Senator Alpert)
846	—	1468	Rosenthal
847	1845	—	Honda (Principal coauthor: Assembly Member Cedillo) (Coauthors: Senators Hughes and Rainey)
848	2696	—	Cardoza
849	—	1466	Polanco
850	1450	—	Shelley
851	1897	—	Alquist (Coauthors: Assembly Members Cunneen, Morrissey, and Napolitano)
852	—	1229	Schiff
853	1386	—	Goldsmith
854	960	—	Wright
855	1755	—	Keeley, Olberg, and Takasugi (Coauthors: Senators Knight and McPherson)
856	1950	—	Torlakson (Principal coauthor: Assembly Member Morrow) (Principal coauthor: Senator Burton)
857	2084	—	Miller
858	2169	—	Kuehl
859	2494	—	Aguiar and Migden
860	—	1173	Vasconcellos and Kopp and Assembly Members Alquist and Honda
861	—	1923	O'Connell (Coauthors: Senators Johnston, McPherson, and Polanco) (Coauthors: Assembly Members Firestone and Takasugi)
862	—	1676	Kopp (Coauthors: Assembly Members Alquist, Cunneen, Davis, Keeley, Martinez, Ortiz, Papan, and Woods)
863	1629	—	Miller and Cunneen (Coauthors: Assembly Members Alquist, Baldwin, Bordonaro, Campbell, Frusetta, Leach, Lempert, Morrissey, and Runner)
864	1665	—	Torlakson (Coauthors: Assembly Members Lempert and Strom-Martin)
865	1676	—	Bowen (Coauthors: Assembly Members Brown, Campbell, Kuehl, Leach, Martinez, and Mazzoni) (Coauthors: Senators Dills, Karnette, O'Connell, Solis, Vasconcellos, and Watson)
866	1784	—	Baca (Coauthors: Assembly Members Havice and Wayne)
867	—	694	Polanco (Coauthor: Senator Alpert) (Coauthors: Assembly Members Granlund and Honda)
868	—	1681	Karnette (Coauthor: Assembly Members Kuykendall and Washington)
869	2297	—	Vincent
870	2283	—	Committee on Agriculture (Cardoza (Chair), Battin, Bordonaro, Brown, Frusetta, House, Machado, Murray, Prenter, and Thomson) (Coauthors: Senators Costa, Johannessen, and Monteith)
871	2572	—	Firestone
872	2771	—	Committee on Consumer Protection, Governmental Efficiency and Economic Development (Davis (Chair), Figueroa, Machado, Napolitano, Runner, Strom-Martin, and Takasugi)
873	2774	—	Committee on Human Services (Aroner (Chair), Ashburn, Brown, Gallegos, Kuehl, and Wright) (Coauthors: Assembly Members Goldsmith and Woods)
874	—	1559	Johnston
875	—	2145	Maddy
876	—	1649	Committee on Local Government (Senators Craven (Chair), Ayala, Costa, Johnston, Kopp, Polanco, Rainey, and Watson) (Coauthor: Senator Monteith)
877	2132	—	Committee on Transportation (Murray (Chair), Brewer, Cardenas, Figueroa, Lempert, Mazzoni, Napolitano, Perata, Runner, Scott, Takasugi, Torlakson, Washington, and Wayne) (Coauthors: Assembly Members Cedillo and Poochigian) (Coauthors: Senators Hughes and Watson)
878	—	2239	Committee on Business and Professions (Senators Polanco (Chair), Ayala, Craven, Greene, Kelley, Lee, O'Connell, and Rosenthal)
879	—	2238	Committee on Business and Professions (Senators Polanco (Chair), Ayala, Craven, Greene, Kelley, Lee, O'Connell, and Rosenthal)
880	2067	—	Cunneen
881	—	1916	Sher
882	—	2240	Committee on Environmental Quality (Senator Sher (Chair), Alpert, McPherson, O'Connell, Rainey, Solis, Thompson, and Wright)
883	194	—	Thomson
884	1021	—	Cedillo and Caldera (Coauthors: Assembly Members Aroner, Bowen, Knox, Kuehl, Lempert, Migden, Scott, Takasugi, and Villaraigosa) (Coauthors: Senators Solis, Vasconcellos, and Watson)
885	1730	—	Wright
886	—	779	Calderon
887	—	1403	Polanco (Coauthors: Senators Solis and Watson) (Coauthors: Assembly Members Cardenas, Havice, Honda, and Prenter)
888	—	1782	Thompson, Peace, and Rosenthal (Coauthor: Assembly Members Alquist, Baugh, Bowen, Brown, Campbell, Cardenas, Firestone, Keeley, Knox, Kuehl, Leonard, Machado, Mazzoni, Ortiz, Scott, Strom-Martin, and Thomson)
889	—	1907	Burton and Peace
890	836	—	Sweeney (Coauthors: Assembly Members Alquist, Aroner, Cardoza, Gallegos, Kuehl, Lempert, Papan, Perata, and Shelley)
891	1534	—	Davis (Coauthor: Senator Kelley)
892	2387	—	Baugh
893	—	984	Rosenthal
894	—	1194	Rosenthal (Principal coauthor: Senator Watson)
895	645	—	Escutia (Coauthor: Assembly Member Kuehl) (Coauthor: Senator Peace)

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896	668	—	Aroner and Shelley (Principal coauthor: Assembly Member Villaraigosa)
897	—	1800	Johnston
898	1068	—	Campbell
899	1396	—	Alquist (Coauthors: Assembly Members Aroner, Keeley, Kuehl, Mazzoni, Napolitano, Perata, Villaraigosa, and Wildman) (Coauthors: Senators Alpert, Hughes, and Watson)
900	2316	—	Knox
901	—	2196	Vasconcellos
902	2772	—	Committee on Human Services (Aroner (Chair), Ashburn, Brown, Gallegos, Kuehl, and Wright) (Principal coauthor: Senate Committee on Health and Human Services (Watson (Chair), Hughes, Polanco, Solis, and Vasconcellos))
903	131	—	Ortiz
904	—	1665	Brulte (Principal coauthor: Assembly Member Granlund)
905	—	2132	Monteith (Coauthor: Assembly Member House)
906	2328	—	Machado
907	1885	—	Papan (Coauthor: Senator Kopp)
908	—	63	Peace (Coauthor: Assembly Member Perata)
909	48	—	Wright (Principal coauthors: Assembly Members Cardoza and Granlund)
910	2022	—	Wright (Principal coauthor: Assembly Member Cardoza)
911	2011	—	Hertzberg
912	1525	—	Ashburn
913	—	1999	Costa
914	499	—	Kuehl (Principal coauthor: Senator Lee) (Coauthors: Assembly Members Alquist, Aroner, Bowen, Honda, Keeley, Knox, Mazzoni, and Thomson) (Coauthors: Senators Solis and Watson)
915	2086	—	Keeley
916	2275	—	Kuykendall (Coauthor: Senator Kopp)
917	2405	—	Leach, Cunneen, and Runner (Coauthor: Senator Kopp)
918	2406	—	Wayne (Principal coauthor: Assembly Member Davis) (Coauthors: Assembly Members Baldwin, Ducheny, and Goldsmith (Coauthors: Senators Alpert and Peace)
919	2492	—	Pringle
920	2645	—	Kuehl
921	2790	—	Ortiz and Aguiar (Coauthor: Senator Rainey)
922	—	591	Johnson (Principal coauthor: Assembly Member Granlund) (Coauthors: Senators Kopp, Peace, and Thompson)
923	—	1753	Schiff and Hayden
924	—	2175	Alpert (Coauthor: Assembly Member Davis)
925	1290	—	Havice (Principal coauthor: Senator Peace)
926	—	1900	Schiff (Coauthor: Senator Haynes)
927	796	—	Havice, Baca, Hertzberg, Machado, McClintock, Murray, Vincent, and Washington (Principal coauthor: Assembly Member Cardoza) (Coauthors: Assembly Members Leach and Napolitano) (Coauthor: Senator Haynes)
928	1927	—	Morrow
929	1745	—	Alby
930	1078	—	Cardoza (Coauthor: Senator Haynes)
931	—	2139	Lockyer
932	1094	—	Committee on Judiciary (Escutia (Chair), Morrow (Vice Chair), Alby, Aroner, Baugh, Figueroa, Keeley, Kuehl, Ortiz, Pacheco, Shelley, and Villaraigosa)
933	1999	—	Kuehl (Principal coauthor: Assembly Member Shelley)
934	880	—	Hertzberg (Principal coauthor: Senator Kopp) (Coauthors: Assembly Members Alquist, Granlund, Murray, Napolitano, Perata, Shelley, Washington, and Woods) (Coauthors: Senators Costa, Craven, Hayden, Hughes, Johannessen, Johnston, Knight, Lockyer, McPherson, Peace, Polanco, Rainey, Rosenthal, Solis, and Watson)
935	—	1715	Calderon (Coauthor: Assembly Member Washington)
936	105	—	Wayne (Coauthor: Senator Peace)
937	2785	—	Richter (Principal coauthor: Senator Leslie)
938	—	1754	Johannessen
939	910	—	Cardenas
940	—	1646	Ayala and Kopp (Coauthor: Senator Vasconcellos) (Coauthors: Assembly Members Lempert and Thomson)
941	191	—	Napolitano
942	—	1370	Polanco and Assembly Members Villaraigosa and Sweeney (Principal coauthors: Assembly Members Escutia and Washington) (Coauthors: Senators Lee and Solis) (Coauthors: Assembly Members Keeley, Leach, Murray, Ortiz, Shelley, Washington, and Wayne)
943	—	1866	Hughes (Coauthor: Assembly Member Washington)
944	190	—	Napolitano (Coauthors: Assembly Members Aguiar, Alquist, Lempert, Vincent, Wayne, and Woods) (Coauthors: Senators Hughes, McPherson, O'Connell, and Watson)
945	2686	—	Mazzoni (Principal coauthor: Assembly Member Washington)
946	—	2199	Lockyer (Principal coauthors: Senators Hughes, Thompson, and Vasconcellos) (Principal coauthor: Assembly Members Cedillo and Woods) (Coauthors: Senators Alpert, Costa, Karnette, McPherson, Rainey, Rosenthal, Sher, Solis, and Watson) (Coauthors: Assembly Members Alquist, Aroner, Baca, Bordonaro, Brown, Davis, Granlund, Havice, Honda, Keeley, Knox, Kuehl, Murray, Ortiz, Perata, Shelley, Strom-Martin, Sweeney, Thomson, Washington, Wildman, Woods, and Wright)
947	2510	—	Strom-Martin (Principal coauthors: Assembly Members Cardoza, Sweeney, Machado, Mazzoni, and Thomson) (Principal coauthor: Senator Thompson)
948	—	409	Alpert and Assembly Member Sweeney (Coauthor: Senator McPherson) (Coauthors: Assembly Members Alquist, Bowler, Cunneen, Davis, Firestone, Honda, Lempert, Mazzoni, Pacheco, Scott, Shelley, and Wayne)
949	—	645	Polanco
950	—	1415	Burton and Assembly Member Olberg (Principal coauthor: Senator Lockyer) (Principal coauthor: Assembly Member Perata) (Coauthors: Senators Alpert, Hughes, Karnette, Rainey, Solis, and Vasconcellos) (Coauthors: Assembly Members Aroner, Figueroa, Leach, Sweeney, and Torlakson)
951	2217	—	Villaraigosa (Principal coauthors: Senators Burton and Peace) (Coauthors: Assembly Members Brewer and Pringle)
952	639	—	Alby (Principal coauthor: Assembly Member Kuykendall) (Coauthors: Assembly Members Ashburn, Battin, Bordonaro, Bowler, Campbell, Cardoza, Granlund, Keeley, Leach, Margett, Olberg, Ortiz, Runner, and Thomson) (Coauthors: Senators Knight, Leslie, Monteith, Rainey, and Thompson)

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Ch. No.	A.B. No.	S.B. No.	Author
953	2782	—	Keeley and Senator Thompson (Principal coauthor: Assembly Member Helen Thomson)
954	2812	—	Committee on Higher Education (Lempert (Chair), Firestone (Vice Chair), Ackerman, Baldwin, Cunneen, Keeley, Kuehl, Scott, and Torlakson)
955	—	1517	Committee on Appropriations (Senators Johnston (Chair), Alpert, Dills, Hughes, Karnette, Lee, McPherson, and Vasconcellos)
956	—	1518	Committee on Appropriations (Senators Johnston (Chair), Alpert, Dills, Hughes, Karnette, McPherson, and Vasconcellos)
957	—	2045	Greene (Principal coauthor: Senator Maddy)
958	—	2128	Johnston (Coauthor: Assembly Member Machado)
959	2259	—	Aguiar
960	2680	—	Wright (Coauthors: Assembly Members Aguiar, Ashburn, Baldwin, Cardoza, Cunneen, Knox, Leach, Machado, Morrissey, Oller, Ortiz, Scott, Washington, and Woods) (Coauthors: Senators Calderon and Kopp)
961	—	1976	Mountjoy
962	—	1397	Brulte and Lockyer and Assembly Members Hertzberg, Migden, and Villaraigosa (Principal coauthor: Assembly Member Leonard) (Coauthors: Senators Costa, Hayden, Haynes, Hurtt, Kelley, Kopp, Leslie, McPherson, Peace, Polanco, Rainey, Rosenthal, Sher, Thompson, Vasconcellos, and Watson) (Coauthors: Assembly Members Ackerman, Alquist, Aroner, Baldwin, Battin, Baugh, Bowen, Bowler, Campbell, Cardoza, Cunneen, Davis, Goldsmith, Granlund, Honda, Kaloogian, Knox, Kuehl, Leach, Lempert, Machado, Margett, Martinez, Morrissey, Murray, Olberg, Pacheco, Poochigian, Richter, Runner, Scott, Shelley, Strom-Martin, Sweeney, Thompson, Washington, Wayne, and Woods)
963	—	1530	Hayden (Principal coauthor: Senator Kopp) (Coauthors: Senators Solis and Watson) (Coauthors: Assembly Members Aroner, Bustamante, Davis, Hertzberg, Kuehl, Lempert, Martinez, Migden, Murray, Shelley, Sweeney, Villaraigosa, and Washington)
964	—	1644	Thompson (Coauthors: Senators Alpert, Craven, and O'Connell) (Coauthors: Assembly Members Bowen, Havice, Keeley, Kuehl, Lempert, Mazzoni, Shelley, Strom-Martin, Sweeney, and Wayne)
965	2765	—	Committee on Public Employees, Retirement and Social Security (Honda (Chair), Migden, Scott, Shelley, and Wildman)
966	1150	—	Prenter, Ashburn, and Honda
967	2804	—	Committee on Public Employees, Retirement and Social Security (Honda (Chair), Migden, Scott, Shelley, and Wildman) (Principal coauthor: Senator Solis) (Coauthors: Assembly Members Baca, Bowler, Bustamante, Campbell, Cedillo, Cunneen, Ducheny, Knox, Ortiz, Prenter, Strom-Martin, and Villaraigosa) (Coauthors: Senators Burton, Hughes, Johnston, Karnette, and O'Connell)
968	—	1528	Schiff
969	—	1913	Ayala (Coauthors: Senators Polanco and Vasconcellos) (Coauthor: Assembly Member Goldsmith)
970	2802	—	Committee on Consumer Protection, Governmental Efficiency and Economic Development (Davis (Chair), Alquist, Figueroa, Machado, Morrissey, Napolitano, Runner, Strom-Martin, Takasugi, and Wildman)
971	2721	—	Miller
972	—	989	Sher
973	—	1825	Committee on Judiciary (Senators Schiff (Chair), Burton, Calderon, Leslie, Lockyer, O'Connell, Sher, and Wright)
974	2150	—	Brewer
975	214	—	Thomson
976	324	—	Baldwin (Principal coauthor: Senator Peace)
977	426	—	Alquist
978	715	—	Figueroa
979	984	—	Davis (Principal coauthor: Assembly Member Ashburn)
980	1780	—	Murray
981	1884	—	Cedillo
982	1942	—	Papan (Principal coauthor: Assembly Member Alquist) (Coauthors: Assembly Members Cunneen, Figueroa, Lempert, and Shelley) (Coauthor: Senator McPherson)
983	2286	—	Scott
984	2305	—	Runner (Principal coauthor: Senator Greene) (Coauthors: Assembly Members Alquist, Bordonaro, Kuehl, and Migden)
985	2377	—	Frusetta
986	2627	—	Brown
987	—	1340	Polanco (Coauthors: Assembly Members Keeley, Olberg, Oller, Wayne, and Woods)
988	—	1454	Leslie (Coauthor: Senator Watson) (Coauthors: Assembly Members Bowler, House, Kaloogian, and Prenter)
989	—	1557	Johnson
990	—	1744	Johnston (Principal coauthor: Assembly Member Knox)
991	—	1980	Greene
992	—	1984	Greene
993	561	—	Scott (Principal coauthor: Senator Thompson) (Coauthors: Assembly Members Alquist, Ashburn, Baugh, Lempert, Mazzoni, and Papan) (Coauthors: Senators Alpert, Haynes, Rainey, and Solis)
994	1560	—	Scott
995	2103	—	Gallegos (Coauthors: Assembly Members Alquist, Aroner, Baca, Kuehl, Martinez, and Ortiz) (Coauthor: Senator Watson)
996	2764	—	Committee on Public Employees, Retirement and Social Security (Honda (Chair), Migden, Scott, Shelley, and Wildman)
997	—	2198	Sher and Leslie (Principal coauthor: Assembly Member Runner) (Coauthors: Senators Costa, Hayden, and Kelley) (Coauthors: Assembly Members Ashburn, Bowen, Cardoza, Lempert, Mazzoni, Oller, Poochigian, Prenter, Strom-Martin, Thompson, and Thomson)
998	2019	—	Kuehl (Coauthors: Assembly Members Aroner, Lempert, and Ortiz) (Coauthors: Senators Alpert, Lee, Solis, and Watson)
999	1208	—	Migden (Principal coauthor: Senator Thompson)
1000	—	262	Burton (Principal coauthor: Senator Calderon) (Coauthor: Senator McPherson) (Coauthors: Assembly Members Woods, Battin, Kaloogian, Knox, Kuehl, and Thomson)
1001	—	705	Rainey
1002	—	844	Burton
1003	—	1520	Kopp

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Ch. No.	A.B. No.	S.B. No.	Author
1004	1935	—	Aroner
1005	—	489	Alpert, Costa, Karnette, Leslie, McPherson, Rainey, Solis, and Watson (Coauthors: Assembly Members Alquist, Aroner, Baca, Brown, Cardenas, Cardoza, Cunneen, Figueroa, Frusetta, Goldsmith, Havice, Kuehl, Knox, Lempert, Machado, Mazzoni, Scott, Sweeney, and Wayne)
1006	1102	—	Knox (Principal coauthor: Assembly Member Honda) (Principal coauthors: Senators O'Connell and Solis) (Coauthors: Assembly Members Baca, Bustamante, Cedillo, Cunneen, Ducheny, Granlund, Lempert, Ortiz, Prenter, Scott, Strom-Martin, and Sweeney) (Coauthors: Senators Hughes, Johnston, Karnette, Rosenthal, Schiff, and Vasconcellos)
1007	—	1587	Alpert and Assembly Member Baca (Coauthor: Senator Lockyer) (Principal coauthor: Assembly Member Ducheny)
1008	1909	—	Wayne
1009	823	—	Gallegos
1010	1092	—	Goldsmith
1011	—	537	Greene
1012	3	—	Baca (Principal coauthor: Assembly Member Granlund) (Coauthor: Senator Ayala)
1013	1439	—	Granlund (Principal coauthor: Assembly Member Thomson)
1014	2198	—	Washington
1015	682	—	Morrow (Coauthor: Assembly Member Alquist)
1016	—	277	Maddy
1017	2788	—	Thomson, Torlakson, Pringle, Leonard, Poochigian, and Ashburn, and Senators Costa, Maddy, Thompson, Brulte, Lockyer, Schiff, and Leslie (Principal coauthors: Senators O'Connell and Peace) (Coauthors: Assembly Members Aguiar, Baca, Battin, Bordonaro, Bowler, Brewer, Brown, Bustamante, Cardenas, Cardoza, Cunneen, Davis, Escutia, Frusetta, Granlund, Havice, Honda, House, Knox, Machado, Margett, Mazzoni, Migden, Napolitano, Olberg, Oller, Ortiz, Pacheco, Prenter, Richter, Scott, Strom-Martin, Vincent, Wayne, Washington, and Woods) (Coauthors: Senators Johannessen, Lewis, and Monteith)
1018	—	687	Hughes (Coauthors: Assembly Members Cedillo and Prenter)
1019	228	—	Migden
1020	117	—	Escutia
1021	—	1847	Schiff (Principal coauthors: Assembly Members Margett and Scott) (Coauthor: Senator Polanco)
1022	2274	—	Leach, Campbell, and Cunneen (Coauthors: Assembly Members Alquist, Battin, Bowler, Granlund, Knox, Margett, and Morrissey)
1023	2329	—	Firestone
1024	1291	—	Strom-Martin and Richter
1025	—	1658	Peace
1026	1899	—	Davis
1027	66	—	Baca and Aguiar (Coauthors: Assembly Members Alby, Alquist, Campbell, Cardoza, Cunneen, Granlund, Honda, Kaloogian, Napolitano, Strom-Martin, Wayne, and Wildman) (Coauthors: Senators Karnette, McPherson, Schiff, and Watson)
1028	473	—	Oller, House, and Woods (Coauthor: Assembly Member Thomson) (Coauthors: Senators Johannessen, Leslie, and Monteith)
1029	698	—	Cardenas
1030	835	—	Wright
1031	1216	—	Kaloogian and Sweeney (Principal coauthor: Assembly Member Baldwin) (Principal coauthor: Senator Haynes) (Coauthors: Assembly Members Battin, Bordonaro, Cardoza, Cunneen, and Oller) (Coauthor: Senator Leslie)
1032	1651	—	Ortiz (Coauthors: Assembly Members Perata and Torlakson) (Coauthors: Senators Karnette and Solis)
1033	1746	—	Escutia and Havice (Coauthor: Assembly Member Morrissey)
1034	1995	—	Leach (Coauthor: Senator Rainey)
1035	2128	—	Takasugi
1036	2142	—	Brown (Principal coauthor: Senator Peace) (Coauthors: Assembly Members Ashburn, Bowen, Davis, Knox, and Machado) (Coauthors: Senators Hughes and Watson)
1037	2222	—	Hertzberg
1038	2621	—	Hertzberg
1039	2809	—	Committee on Revenue and Taxation (Knox (Chair), Alquist, Aroner, Cedillo, Machado, Miller, Ortiz, Takasugi, and Wright)
1040	—	345	Polanco (Coauthors: Assembly Members Alquist, Martinez, Strom-Martin, Torlakson, and Washington)
1041	—	378	Peace (Principal coauthor: Assembly Member Brown)
1042	—	977	Sher (Coauthor: Assembly Member Figueroa)
1043	—	1038	Thompson (Coauthors: Senators Alpert, Solis, Vasconcellos, and Watson) (Coauthor: Assembly Member Migden)
1044	—	1488	Rainey (Coauthor: Senator McPherson) (Coauthors: Assembly Members Cunneen, Kuehl, Migden, and Murray)
1045	—	1582	Brulte and Assembly Members Migden and Cardoza (Principal coauthor: Senator Monteith)
1046	—	1641	Burton
1047	—	1770	McPherson (Coauthors: Senators Calderon, Monteith, and Vasconcellos) (Coauthors: Assembly Members Figueroa, Keeley, Napolitano, and Thomson)
1048	—	2085	Burton
1049	—	2174	Rainey
1050	2794	—	Committee on Budget (Ducheny (Chair), Aroner, Brown, Cardenas, Cardoza, Cedillo, Davis, Gallegos, Keeley, Papan, Scott, Strom-Martin, Torlakson, and Wright)
1051	—	1574	Committee on Budget and Fiscal Review (Coauthor: Assembly Member Mazzoni)
1052	1241	—	Keeley (Principal coauthor: Senator Thompson) (Coauthors: Assembly Members Bowen, Cardoza, Honda, Kuehl, Lempert, Torlakson, and Wayne) (Coauthors: Senators Alpert, Johnston, and McPherson)
1053	—	1336	Thompson (Coauthor: Assembly Member Keeley)
1054	1091	—	Committee on Judiciary (Escutia (Chair), Morrow (Vice Chair), Alby, Aroner, Baugh, Figueroa, Keeley, Kuehl, Ortiz, Pacheco, Shelley, and Villaraigosa)
1055	—	1901	McPherson (Coauthors: Senators Alpert and O'Connell) (Coauthors: Assembly Members Aroner, Ashburn, Baca, Cunneen, Kuehl, Migden, Shelley, Thomson, and Washington)
1056	2773	—	Committee on Human Services (Aroner (Chair), Ashburn, Brown, Gallegos, Goldsmith, Kuehl, Woods, and Wright)
1057	1812	—	Machado

TABLE OF LAWS ENACTED—Continued

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Ch. No.	A.B. No.	S.B. No.	Author
1058	205	—	Machado (Principal coauthor: Assembly Member Honda) (Coauthor: Assembly Member Alquist)
1059	830	—	Pringle (Coauthor: Assembly Member Brewer) (Coauthor: Senator Hurtt)
1060	1671	—	Keeley
1061	2197	—	Washington
1062	2229	—	Keeley
1063	2410	—	Shelley (Principal coauthor: Senator Calderon)
1064	2438	—	Murray
1065	2495	—	Prenter (Principal coauthor: Senator Costa) (Coauthors: Assembly Members Granlund and Ortiz) (Coauthor: Senator Schiff)
1066	—	896	Alpert
1067	—	1537	Rosenthal
1068	—	1763	Costa
1069	—	1897	Wright (Principal coauthor: Assembly Member Washington) (Coauthor: Assembly Member Kuehl)
1070	—	2003	Knight
1071	—	2186	Knight
1072	2196	—	Washington
1073	—	627	Karnette
1074	—	1021	Burton
1075	—	2075	Polanco
1076	—	2126	Committee on Public Employment and Retirement (Senators Schiff (Chair), Burton, and Karnette)
1077	—	610	O'Connell
1078	—	1064	Johnston (Coauthors: Senators Costa, Dills, Hughes, Lee, Lockyer, Rosenthal, Sher, and Watson) (Coauthor: Assembly Members Alquist, Aroner, and Kuehl)
1079	—	1418	Rosenthal
1080	—	1737	McPherson
9004	9004	—	Proposition Four
9005	9005	—	Proposition Five
9006	9006	—	Proposition Six
9007	9007	—	Proposition Seven
9008	9008	—	Proposition Eight
9009	9009	—	Proposition Nine
9010	9010	—	Proposition Ten

TABLE OF RESOLUTIONS AND PROPOSED CONSTITUTIONAL AMENDMENTS ADOPTED BY THE LEGISLATURE

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1997–98 Regular Session

Res. Ch.	Res. No.		Author
1	SJR	33	Brulte
2	ACR	83	Murray
3	ACR	86	Machado
4	SCR	61	Solis, Alpert, Costa, Dills, Hughes, Lockyer, Maddy, Rosenthal, Sher, Thompson, and Vasconcellos (Coauthors: Assembly Members Aroner, Baldwin, Ducheny, Escutia, Havice, Honda, Lempert, and Perata)
5	ACR	14	Ducheny (Coauthors: Assembly Members Aroner, Baca, Bowen, Cardenas, Cunneen, Davis, Figueroa, Firestone, Keeley, Kuehl, Mazzoni, Napolitano, Perata, Scott, Strom-Martin, Thomson, Washington, Aguiar, Alquist, Ashburn, Bustamante, Cardoza, Escutia, Floyd, Frusetta, Gallegos, Goldsmith, Granlund, Havice, Hertzberg, Honda, Knox, Lempert, Machado, Martinez, Miller, Murray, Ortiz, Pacheco, Papan, Prenter, Shelley, Sweeney, Takasugi, Torlakson, Villaraigosa, Vincent, Wayne, Wildman, Woods, and Wright) (Coauthors: Senators Dills, Hayden, Hughes, Karnette, Schiff, Sher, Vasconcellos, and Watson)
6	AJR	44	Knox (Principal coauthors: Assembly Members Bustamante and Leonard) (Principal Senate coauthors: Senators Lockyer and Hurtt) (Coauthors: Assembly Members Alquist, Aroner, Baldwin, Bowen, Bowler, Cardenas, Davis, Escutia, Figueroa, Gallegos, Havice, Hertzberg, Honda, Kaloogian, Keeley, Kuehl, Kuykendall, Leach, Lempert, Machado, Mazzoni, Migden, Murray, Napolitano, Olberg, Papan, Perata, Poochigian, Richter, Scott, Shelley, Strom-Martin, Sweeney, Thompson, Thomson, Torlakson, Villaraigosa, Washington, Wayne, Wildman, Woods, and Wright) (Coauthors: Senators Alpert, Brulte, Costa, Hayden, Haynes, Johnston, Karnette, Polanco, Rosenthal, Schiff, Sher, Solis, and Vasconcellos)
7	ACR	90	Honda and Takasugi (Coauthors: Assembly Members Ackerman, Aguiar, Alquist, Aroner, Baca, Baldwin, Battin, Baugh, Bowen, Brewer, Bustamante, Cardenas, Cardoza, Cedillo, Davis, Ducheny, Figueroa, Firestone, Frusetta, Gallegos, Granlund, Havice, Hertzberg, House, Kaloogian, Keeley, Knox, Kuehl, Kuykendall, Leach, Lempert, Leonard, Machado, Margett, Martinez, Mazzoni, Migden, Miller, Morrissey, Murray, Napolitano, Olberg, Oller, Ortiz, Pacheco, Papan, Perata, Poochigian, Richter, Runner, Scott, Shelley, Strom-Martin, Sweeney, Thompson, Thomson, Torlakson, Villaraigosa, Vincent, Washington, Wayne, Wildman, Woods, and Wright) (Coauthors: Senators Dills, Alpert, Ayala, Brulte, Burton, Calderon, Costa, Greene, Hayden, Haynes, Hughes, Hurtt, Johannessen, Johnson, Johnston, Karnette, Kelley, Knight, Kopp, Lee, Leslie, Lewis, Maddy, McPherson, Monteith, Mountjoy, O'Connell, Polanco, Rainey, Rosenthal, Schiff, Solis, Thompson, Vasconcellos, Watson, and Wright)
8	ACR	95	Wayne (Coauthors: Assembly Members Ackerman, Aguiar, Alby, Alquist, Aroner, Ashburn, Baca, Baldwin, Battin, Baugh, Bowen, Brown, Bustamante, Campbell, Cardenas, Cardoza, Cedillo, Cunneen, Davis, Figueroa, Frusetta, Gallegos, Goldsmith, Havice, Hertzberg, Honda, House, Kaloogian, Keeley, Knox, Kuehl, Kuykendall, Leach, Lempert, Leonard, Machado, Margett, Martinez, Mazzoni, Migden, Miller, Morrissey, Morrow, Murray, Napolitano, Olberg, Oller, Ortiz, Pacheco, Papan, Perata, Pringle, Richter, Runner, Scott, Shelley, Strom-Martin, Sweeney, Takasugi, Thompson, Thomson, Torlakson, Villaraigosa, Vincent, Washington, Wildman, Woods, and Wright)
9	ACR	85	Wildman (Coauthors: Assembly Members Ackerman, Aguiar, Alby, Alquist, Aroner, Ashburn, Baca, Baldwin, Battin, Baugh, Bowen, Brown, Bustamante, Campbell, Cardenas, Cardoza, Cedillo, Cunneen, Davis, Ducheny, Escutia, Figueroa, Firestone, Floyd, Frusetta, Gallegos, Granlund, Havice, Hertzberg, Honda, House, Kaloogian, Keeley, Knox, Kuehl, Kuykendall, Leach, Lempert, Leonard, Machado, Margett, Martinez, Mazzoni, McClintock, Migden, Miller, Morrissey, Morrow, Murray, Napolitano, Olberg, Oller, Ortiz, Papan, Perata, Poochigian, Prenter, Pringle, Richter, Scott, Shelley, Strom-Martin, Sweeney, Thomson, Torlakson, Villaraigosa, Vincent, Washington, Wayne, and Woods) (Coauthors: Senators Burton, Alpert, Ayala, Brulte, Dills, Greene, Hayden, Haynes, Hughes, Hurtt, Johannessen, Johnson, Johnston, Karnette, Kelley, Knight, Kopp, Lee, Leslie, Lewis, Maddy, McPherson, Monteith, Mountjoy, O'Connell, Polanco, Rainey, Rosenthal, Schiff, Solis, Thompson, Watson, and Wright)
10	ACR	88	Mazzoni (Principal coauthor: Assembly Member Woods) (Principal coauthors: Senators McPherson and Vasconcellos) (Coauthors: Assembly Members Ackerman, Aguiar, Alquist, Aroner, Ashburn, Baca, Baldwin, Battin, Baugh, Bordonaro, Bowen, Brown, Bustamante, Cardenas, Cardoza, Cedillo, Cunneen, Davis, Ducheny, Escutia, Figueroa, Frusetta, Gallegos, Goldsmith, Granlund, Havice, Hertzberg, Honda, House, Keeley, Knox, Kuehl, Kuykendall, Leach, Lempert, Machado, Martinez, McClintock, Migden, Miller, Morrissey, Morrow, Murray, Napolitano, Olberg, Oller, Ortiz, Pacheco, Papan, Perata, Poochigian, Prenter, Pringle, Runner, Scott, Shelley, Strom-Martin, Sweeney, Takasugi, Thomson, Torlakson, Villaraigosa, Vincent, Washington, Wayne, Wildman, and Wright) (Coauthors: Senators Alpert, Costa, Lockyer, Solis, and Watson)
11	SJR	28	Kopp
12	ACR	104	Wayne and Davis

TABLE OF RESOLUTIONS AND PROPOSED CONSTITUTIONAL AMENDMENTS ADOPTED BY THE LEGISLATURE—Continued

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Res. Ch.	Res.	No.	Author
13	SCR	66	Lockyer (Coauthors: Assembly Members Ackerman, Aguiar, Alquist, Aroner, Ashburn, Baca, Bowen, Brown, Campbell, Cardenas, Cardoza, Cunneen, Davis, Ducheny, Escutia, Figueroa, Firestone, Floyd, Frusetta, Gallegos, Goldsmith, Havice, Hertzberg, Honda, House, Kaloogian, Keeley, Knox, Kuehl, Kuykendall, Leach, Lempert, Machado, Margett, Martinez, Mazzoni, Migden, Miller, Morrissey, Morrow, Murray, Napolitano, Olberg, Oller, Ortiz, Pacheco, Papan, Perata, Poochigian, Prenter, Pringle, Richter, Scott, Shelley, Strom-Martin, Sweeney, Takasugi, Thomson, Torlakson, Villaraigosa, Vincent, Washington, Wayne, Wildman, Woods and Wright)
14	ACR	111	Strom-Martin (Coauthor: Senator Thompson)
15	ACR	115	Gallegos, Ackerman, Aroner, Baca, Brown, Kuehl, Mazzoni, Migden, Napolitano, Papan, Takasugi, Thomson, Washington, Wayne, Woods, Aguiar, Alby, Alquist, Ashburn, Baldwin, Battin, Baugh, Bordonaro, Bowen, Bustamante, Campbell, Cardenas, Cardoza, Cedillo, Cunneen, Davis, Ducheny, Escutia, Figueroa, Firestone, Floyd, Frusetta, Granlund, Havice, Hertzberg, Honda, House, Keeley, Knox, Kuykendall, Leach, Lempert, Leonard, Machado, Margett, Martinez, McClintock, Miller, Morrissey, Ortiz, Pacheco, Perata, Prenter, Pringle, Scott, Shelley, Strom-Martin, Sweeney, Thompson, Torlakson, Villaraigosa, Vincent, Wildman, and Wright) (Coauthors: Senators Alpert, Costa, Hughes, Johnston, Vasconcellos, and Watson)
16	SCR	62	Solis, Alpert, Ayala, Brulte, Burton, Calderon, Costa, Craven, Dills, Greene, Hayden, Haynes, Hughes, Hurtt, Johannessen, Johnson, Johnston, Karnette, Kelley, Knight, Kopp, Lee, Leslie, Lewis, Lockyer, Maddy, McPherson, Monteith, Mountjoy, O'Connell, Peace, Polanco, Rainey, Rosenthal, Schiff, Sher, Thompson, Vasconcellos, Watson, and Wright (Coauthors: Assembly Members Aroner, Escutia, Havice, Lempert, Machado, Murray, Ortiz, Perata, Ackerman, Aguiar, Alquist, Ashburn, Baca, Battin, Baugh, Bordonaro, Bowen, Bustamante, Campbell, Cardenas, Cardoza, Cedillo, Cunneen, Davis, Ducheny, Figueroa, Firestone, Frusetta, Gallegos, Granlund, Hertzberg, Honda, House, Kaloogian, Keeley, Knox, Kuehl, Kuykendall, Leach, Leonard, Margett, Martinez, Mazzoni, McClintock, Migden, Miller, Morrissey, Morrow, Napolitano, Olberg, Oller, Papan, Poochigian, Prenter, Pringle, Runner, Scott, Shelley, Strom-Martin, Sweeney, Takasugi, Thompson, Thomson, Torlakson, Villaraigosa, Vincent, Washington, Wayne, Wildman, and Wright)
17	SJR	34	Johannessen (Principal coauthor: Senator Kopp)
18	ACR	89	Machado
19	ACR	93	McClintock, Knox, and Thomson
20	ACR	103	Battin (Coauthors: Assembly Members Ackerman, Aguiar, Alby, Alquist, Baca, Baldwin, Baugh, Bowler, Bustamante, Campbell, Cardoza, Cedillo, Cunneen, Davis, Ducheny, Escutia, Firestone, Floyd, Frusetta, Granlund, Havice, Hertzberg, Honda, House, Keeley, Kuehl, Kuykendall, Leach, Leonard, Machado, Margett, Mazzoni, McClintock, Miller, Morrissey, Morrow, Olberg, Ortiz, Papan, Perata, Runner, Scott, Shelley, Strom-Martin, Sweeney, Takasugi, Thompson, Thomson, Torlakson, Villaraigosa, Vincent, Washington, Wayne, Wildman, Woods, and Wright)
21	ACR	120	Honda (Coauthors: Assembly Members Ackerman, Alquist, Aroner, Baca, Battin, Baugh, Bowen, Brown, Bustamante, Cardenas, Cardoza, Cedillo, Cunneen, Davis, Ducheny, Escutia, Figueroa, Floyd, Frusetta, Gallegos, Havice, Hertzberg, Kaloogian, Keeley, Knox, Kuykendall, Leach, Lempert, Machado, Martinez, Migden, Morrissey, Napolitano, Oller, Ortiz, Pacheco, Perata, Prenter, Shelley, Strom-Martin, Sweeney, Takasugi, Thomson, Torlakson, Villaraigosa, Vincent, Washington, Wayne, Wildman, and Wright) (Coauthors: Senators Ayala, Brulte, Burton, Calderon, Costa, Dills, Greene, Hayden, Hughes, Johnston, Karnette, Kelley, Knight, Kopp, Lee, Leslie, Lewis, Mountjoy, O'Connell, Rainey, Rosenthal, Schiff, Solis, Watson, and Wright)
22	AJR	47	Knox (Principal coauthors: Assembly Members Shelley and Thompson) (Coauthors: Assembly Members Alquist, Aroner, Bowen, Bowler, Bustamante, Campbell, Cedillo, Cunneen, Davis, Figueroa, Havice, Hertzberg, Honda, House, Kaloogian, Keeley, Kuehl, Kuykendall, Leach, Lempert, Leonard, Machado, Mazzoni, McClintock, Migden, Miller, Murray, Oller, Perata, Pringle, Richter, Runner, Scott, Strom-Martin, Thomson, Villaraigosa, and Wayne) (Coauthors: Senators Alpert, Brulte, Costa, Greene, Hayden, Haynes, Johnston, Karnette, Kelley, Leslie, Lockyer, Peace, Rosenthal, Schiff, Sher, Thompson, and Vasconcellos)
23	AJR	52	Wright (Principal coauthors: Assembly Members Vincent, Murray, Aroner, and Washington) (Principal coauthors: Senators Hughes, Lee, and Watson) (Coauthors: Assembly Members Alquist, Bowen, Cardenas, Gallegos, Hertzberg, Honda, Keeley, Knox, Napolitano, Perata, Takasugi, Torlakson, Ackerman, Aguiar, Alby, Ashburn, Baca, Battin, Baugh, Bordonaro, Bowler, Bustamante, Campbell, Cardoza, Cedillo, Cunneen, Davis, Ducheny, Escutia, Figueroa, Firestone, Floyd, Frusetta, Goldsmith, Granlund, Havice, House, Kaloogian, Kuehl, Kuykendall, Lempert, Leonard, Machado, Margett, Mazzoni, McClintock, Migden, Miller, Morrissey, Olberg, Oller, Ortiz, Papan, Poochigian, Prenter, Pringle, Richter, Runner, Scott, Shelley, Strom-Martin, Sweeney, Thompson, Thomson, Villaraigosa, Wayne, Wildman, and Woods)
24	SCR	76	Johannessen
25	SJR	31	Johannessen and McPherson (Coauthors: Assembly Members Keeley and Woods)
26	ACR	66	Olberg

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Res. Ch.	Res. No.		Author
27	ACR	80	Aguiar (Coauthor: Assembly Member Baca)
28	ACR	127	Ortiz and Perata
29	ACR	138	Poochigian, Kaloogian, Papan, and Wildman (Coauthors: Assembly Members Ackerman, Aguiar, Alby, Alquist, Aroner, Ashburn, Baca, Baldwin, Battin, Baugh, Bordonaro, Bowen, Bowler, Brewer, Brown, Bustamante, Campbell, Cardenas, Cardoza, Cedillo, Cunneen, Davis, Ducheny, Escutia, Figueroa, Firestone, Floyd, Frusetta, Gallegos, Goldsmith, Granlund, Havice, Hertzberg, Honda, House, Keeley, Knox, Kuehl, Kuykendall, Leach, Lempert, Leonard, Machado, Margett, Martinez, Mazzoni, McClintock, Migden, Miller, Morrissey, Morrow, Murray, Napolitano, Olberg, Oller, Ortiz, Pacheco, Perata, Prenter, Pringle, Richter, Runner, Scott, Shelley, Strom-Martin, Sweeney, Takasugi, Thompson, Thomson, Torlakson, Villaraigosa, Vincent, Washington, Wayne, Woods, and Wright) (Coauthors: Senators Ayala, Brulte, Burton, Costa, Dills, Greene, Hayden, Haynes, Hughes, Johannessen, Johnson, Johnston, Karnette, Kelley, Knight, Kopp, Leslie, Lewis, Lockyer, Maddy, McPherson, Monteith, Mountjoy, O'Connell, Peace, Polanco, Rainey, Rosenthal, Schiff, Sher, Solis, Thompson, Vasconcellos, and Wright)
30	ACR	60	Baldwin
31	ACR	114	Machado
32	ACR	131	Baca (Coauthors: Assembly Members Ackerman, Aguiar, Alquist, Aroner, Ashburn, Baldwin, Battin, Baugh, Bordonaro, Bowen, Brown, Bustamante, Campbell, Cardenas, Cardoza, Cedillo, Davis, Escutia, Figueroa, Floyd, Frusetta, Gallegos, Granlund, Havice, Hertzberg, Honda, House, Kaloogian, Keeley, Knox, Kuehl, Leach, Lempert, Leonard, Margett, Mazzoni, McClintock, Migden, Miller, Morrissey, Murray, Napolitano, Olberg, Oller, Perata, Poochigian, Prenter, Pringle, Scott, Shelley, Strom-Martin, Sweeney, Takasugi, Thompson, Torlakson, Villaraigosa, Vincent, Washington, Wayne, Wildman, Woods and Wright)
33	ACR	136	Davis (Coauthors: Assembly Members Ackerman, Aguiar, Alby, Alquist, Aroner, Ashburn, Baca, Baldwin, Battin, Baugh, Bordonaro, Bowen, Brewer, Brown, Bustamante, Campbell, Cardenas, Cardoza, Cedillo, Cunneen, Ducheny, Escutia, Figueroa, Firestone, Frusetta, Gallegos, Goldsmith, Granlund, Havice, Hertzberg, Honda, House, Kaloogian, Keeley, Knox, Kuehl, Kuykendall, Leach, Lempert, Leonard, Machado, Margett, Martinez, Mazzoni, McClintock, Migden, Miller, Morrissey, Murray, Napolitano, Olberg, Oller, Ortiz, Pacheco, Papan, Perata, Poochigian, Prenter, Pringle, Richter, Runner, Scott, Shelley, Strom-Martin, Sweeney, Takasugi, Thompson, Thomson, Torlakson, Villaraigosa, Vincent, Washington, Wayne, Wildman, Woods, and Wright)
34	SCR	83	Hughes
35	SJR	32	Thompson and Kopp (Coauthors: Senators Alpert, Burton, Johnston, McPherson, Peace, Rainey, Rosenthal, Sher, and Watson) (Coauthor: Assembly Member Strom-Martin)
36	SJR	42	Thompson (Principal coauthor: Assembly Member Cardoza) (Coauthors: Senators Alpert, Ayala, Burton, Costa, Dills, Johannessen, Johnston, Karnette, Kelley, Leslie, McPherson, Monteith, O'Connell, Peace, Polanco, and Wright) (Coauthors: Assembly Members Brown, Alquist, Aroner, Baca, Bowen, Cardenas, Cedillo, Cunneen, Davis, Ducheny, Escutia, Figueroa, Gallegos, Havice, Hertzberg, Honda, Keeley, Knox, Lempert, Machado, Mazzoni, Migden, Ortiz, Perata, Scott, Shelley, Strom-Martin, Sweeney, Thomson, Torlakson, Villaraigosa, Vincent, Washington, Wayne, Wildman, Woods, and Wright)
37	ACR	113	Wayne
38	ACR	121	Wayne
39	ACR	126	Wayne
40	ACR	128	Machado
41	AJR	65	Villaraigosa, Figueroa, and Gallegos (Coauthors: Senators Johnston, Rosenthal, and Watson)
42	AJR	66	Honda (Coauthors: Assembly Members Alquist, Aroner, Ashburn, Baca, Baldwin, Baugh, Bowen, Brown, Bustamante, Cardenas, Cardoza, Cedillo, Cunneen, Davis, Ducheny, Escutia, Figueroa, Floyd, Frusetta, Gallegos, Goldsmith, Granlund, Hertzberg, Kaloogian, Keeley, Knox, Kuehl, Leach, Lempert, Leonard, Machado, Margett, Martinez, Mazzoni, Migden, Miller, Morrissey, Morrow, Murray, Napolitano, Olberg, Oller, Ortiz, Papan, Perata, Poochigian, Prenter, Richter, Scott, Shelley, Strom-Martin, Sweeney, Takasugi, Thompson, Thomson, Torlakson, Villaraigosa, Vincent, Washington, Wayne, Wildman, Woods, and Wright)
43	ACR	124	Baca and Ducheny (Principal coauthors: Assembly Members Baldwin, Bustamante, Cardenas, Cedillo, Escutia, Figueroa, Gallegos, Havice, Knox, Kuehl, Margett, Martinez, Mazzoni, McClintock, Morrissey, Napolitano, Ortiz, Richter, Thompson, Villaraigosa, and Woods) (Coauthors: Assembly Members Ackerman, Aguiar, Alby, Alquist, Ashburn, Battin, Baugh, Bordonaro, Bowen, Brown, Campbell, Cardoza, Cunneen, Davis, Floyd, Frusetta, Granlund, Honda, House, Kaloogian, Keeley, Kuykendall, Leach, Lempert, Machado, Migden, Miller, Murray, Olberg, Oller, Pacheco, Papan, Perata, Poochigian, Prenter, Pringle, Scott, Shelley, Strom-Martin, Sweeney, Takasugi, Thomson, Torlakson, Vincent, Washington, Wayne, Wildman, and Wright) (Principal coauthors: Senators Alpert, Calderon, Costa, Hayden, Hughes, Karnette, Kelley, Lee, Lockyer, Polanco, Rosenthal, Solis, Thompson, Vasconcellos, and Watson)
44	ACR	150	Papan (Coauthors: Assembly Members Ackerman, Alquist, Baca, Battin, Baugh, Bowen, Brown, Bustamante, Campbell, Cardoza, Cunneen, Davis, Ducheny, Escutia, Goldsmith, Granlund, Havice, Honda, House, Keeley, Kuehl, Kuykendall, Lempert, Machado, Martinez, Mazzoni, Migden, Napolitano, Olberg, Ortiz, Papan,

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Res. Ch.	Res.	No.	Author
			Perata, Pringle, Scott, Shelley, Strom-Martin, Sweeney, Torlakson, Villaraigosa, Vincent, Washington, Wildman, and Wright)
45	SCR	60	Johannessen
46	SJR	35	Solis, Alpert, Ayala, Brulte, Burton, Costa, Dills, Greene, Hughes, Johannessen, Johnson, Johnston, Karnette, Kelley, Knight, Kopp, Lee, Lewis, Lockyer, Maddy, McPherson, Monteith, Mountjoy, O'Connell, Polanco, Rainey, Rosenthal, Schiff, Sher, Thompson, Vasconcellos, Watson, and Wright
47	ACR	118	Morrow
48	ACR	117	Machado
49	ACR	119	Alby
50	ACR	135	Torlakson
51	ACR	137	Machado
52	ACR	152	Thomson (Coauthors: Assembly Members Aguiar, Alby, Alquist, Aroner, Baca, Baldwin, Battin, Baugh, Bowen, Brown, Campbell, Cardenas, Cardoza, Cedillo, Cunneen, Davis, Ducheny, Escutia, Figueroa, Frusetta, Gallegos, Goldsmith, Granlund, Havice, Hertzberg, Honda, House, Keeley, Knox, Kuehl, Leach, Machado, Martinez, Mazzoni, McClintock, Migden, Morrissey, Morrow, Murray, Napolitano, Olberg, Ortiz, Pacheco, Papan, Perata, Poochigian, Prenter, Pringle, Scott, Shelley, Strom-Martin, Sweeney, Takasugi, Torlakson, Villaraigosa, Vincent, Washington, Wayne, Wildman, and Wright)
53	SCR	87	Johannessen (Coauthors: Assembly Members Ackerman, Aguiar, Alby, Alquist, Aroner, Ashburn, Baca, Baldwin, Battin, Baugh, Bordonaro, Bowen, Bowler, Brown, Campbell, Cardenas, Cardoza, Cedillo, Cunneen, Davis, Ducheny, Escutia, Figueroa, Firestone, Frusetta, Gallegos, Goldsmith, Granlund, Havice, Hertzberg, Honda, House, Kaloogian, Keeley, Knox, Kuehl, Kuykendall, Leach, Leonard, Machado, Margett, Martinez, Mazzoni, McClintock, Migden, Miller, Morrissey, Morrow, Murray, Napolitano, Olberg, Oller, Ortiz, Pacheco, Papan, Poochigian, Prenter, Pringle, Scott, Shelley, Strom-Martin, Sweeney, Takasugi, Thompson, Thomson, Torlakson, Villaraigosa, Vincent, Washington, Wayne, Wildman, Woods, and Wright)
54	ACR	109	Wildman and Havice (Coauthors: Assembly Members Bowler House, Ackerman, Aguiar, Alby, Alquist, Aroner, Ashburn, Baca, Baldwin, Battin, Baugh, Bordonaro, Bowen, Brown, Campbell, Cardenas, Cardoza, Cedillo, Cunneen, Davis, Ducheny, Escutia, Figueroa, Firestone, Floyd, Frusetta, Gallegos, Goldsmith, Granlund, Hertzberg, Honda, Kaloogian, Keeley, Knox, Kuehl, Kuykendall, Leach, Leonard, Machado, Margett, Martinez, Mazzoni, McClintock, Migden, Miller, Morrissey, Morrow, Murray, Napolitano, Olberg, Oller, Ortiz, Pacheco, Papan, Perata, Poochigian, Prenter, Pringle, Scott, Shelley, Strom-Martin, Sweeney, Takasugi, Thompson, Thomson, Torlakson, Villaraigosa, Vincent, Washington, Wayne, and Woods) (Coauthors: Senators Alpert, Ayala, Costa, Dills, Greene, Haynes, Hughes, Johannessen, Johnston, Karnette, Kelley, Kopp, Leslie, Lewis, Lockyer, Maddy, McPherson, Monteith, O'Connell, Peace, Polanco, Rainey, Rosenthal, Schiff, Sher, Solis, Thompson, Watson, and Wright)
55	ACR	110	Wayne
56	SCR	88	Polanco (Coauthors: Assembly Members Aguiar, Alquist, Aroner, Baca, Baldwin, Battin, Baugh, Bordonaro, Bowen, Brown, Bustamante, Cardoza, Cedillo, Cunneen, Davis, Ducheny, Escutia, Figueroa, Gallegos, Granlund, Havice, Honda, House, Kaloogian, Keeley, Knox, Kuehl, Kuykendall, Leach, Lempert, Machado, Mazzoni, McClintock, Migden, Miller, Morrissey, Murray, Napolitano, Olberg, Oller, Ortiz, Papan, Perata, Poochigian, Pringle, Runner, Scott, Shelley, Strom-Martin, Sweeney, Takasugi, Thomson, Torlakson, Villaraigosa, Vincent, Washington, Wayne, Wildman, and Wright)
57	ACR	122	Gallegos, Baca, Bustamante, Cardenas, Cedillo, Ducheny, Martinez, Napolitano, Ortiz, and Villaraigosa (Coauthors: Senators Calderon, Polanco, and Solis)
58	ACR	140	Wayne
59	ACR	154	Floyd (Coauthors: Assembly Members Ackerman, Aguiar, Alby, Alquist, Aroner, Ashburn, Baca, Baldwin, Battin, Baugh, Bordonaro, Bowen, Bowler, Brewer, Brown, Campbell, Cardenas, Cardoza, Cedillo, Cunneen, Davis, Ducheny, Escutia, Figueroa, Firestone, Frusetta, Gallegos, Granlund, Havice, Hertzberg, Honda, House, Kaloogian, Keeley, Knox, Kuehl, Leach, Lempert, Leonard, Machado, Margett, Mazzoni, McClintock, Migden, Miller, Morrissey, Morrow, Murray, Napolitano, Olberg, Oller, Ortiz, Pacheco, Papan, Perata, Poochigian, Prenter, Pringle, Richter, Runner, Scott, Shelley, Strom-Martin, Sweeney, Takasugi, Thompson, Thomson, Torlakson, Villaraigosa, Vincent, Washington, Wayne, Wildman, Woods, and Wright)
60	ACA	22	Pringle
61	ACR	139	Baca (Coauthors: Assembly Members Ackerman, Aguiar, Alquist, Aroner, Ashburn, Baldwin, Battin, Baugh, Bowen, Bowler, Brown, Campbell, Cardenas, Cardoza, Cedillo, Cunneen, Davis, Ducheny, Escutia, Figueroa, Frusetta, Gallegos, Granlund, Havice, Hertzberg, Honda, House, Kaloogian, Keeley, Knox, Kuehl, Leach, Lempert, Machado, Martinez, Mazzoni, McClintock, Migden, Miller, Morrissey, Morrow, Murray, Napolitano, Olberg, Oller, Pacheco, Papan, Perata, Poochigian, Pringle, Richter, Runner, Scott, Strom-Martin, Sweeney, Takasugi, Thomson, Torlakson, Villaraigosa, Vincent, Washington, Wayne, Wildman, and Wright)
62	ACR	153	Honda
63	ACR	112	Bustamante (Coauthors: Assembly Members Davis, Havice, Machado, Wayne, and Wildman)
64	SCR	73	Kopp and Burton
65	SCR	79	O'Connell and Kopp (Coauthors: Assembly Members Bordonaro and Firestone)
66	SCR	91	Monteith (Coauthors: Senators Alpert, Karnette, Leslie, Lewis, Rainey, Solis, and Watson) (Coauthors: Assembly Members

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			Alby, Baldwin, Cunneen, House, Margett, Morrissey, Morrow, Oller, Richter, Washington, Wayne, Ackerman, Aguiar, Alquist, Aroner, Ashburn, Baca, Battin, Baugh, Bordonaro, Bowen, Bowler, Brown, Bustamante, Campbell, Cardenas, Cardoza, Cedillo, Davis, Ducheny, Escutia, Figueroa, Firestone, Frusetta, Gallegos, Goldsmith, Granlund, Havice, Hertzberg, Keeley, Knox, Kuehl, Kuykendall, Leach, Lempert, Leonard, Machado, Martinez, Mazzoni, Migden, Miller, Murray, Napolitano, Olberg, Papan, Perata, Poochigian, Pringle, Scott, Shelley, Strom-Martin, Sweeney, Takasugi, Thompson, Thomson, Torlakson, Villaraigosa, Vincent, Wildman, and Woods)
67	ACR	144	Thomson (Coauthors: Assembly Members Ackerman, Aguiar, Alby, Alquist, Aroner, Ashburn, Baca, Baldwin, Battin, Baugh, Bordonaro, Bowen, Brown, Campbell, Cardenas, Cardoza, Cedillo, Cunneen, Davis, Ducheny, Escutia, Figueroa, Firestone, Floyd, Frusetta, Gallegos, Goldsmith, Granlund, Havice, Hertzberg, Honda, House, Kaloogian, Keeley, Knox, Kuehl, Kuykendall, Leach, Leonard, Machado, Margett, Martinez, Mazzoni, Migden, Miller, Morrissey, Morrow, Murray, Napolitano, Olberg, Oller, Ortiz, Pacheco, Papan, Perata, Poochigian, Prenter, Pringle, Scott, Shelley, Strom-Martin, Sweeney, Takasugi, Torlakson, Villaraigosa, Vincent, Washington, Wayne, Wildman, Woods, and Wright)
68	ACR	151	Thomson and Perata (Coauthors: Assembly Members Aguiar, Alby, Alquist, Aroner, Baca, Baugh, Bowen, Brown, Cardenas, Cardoza, Cedillo, Cunneen, Davis, Ducheny, Escutia, Figueroa, Frusetta, Gallegos, Goldsmith, Granlund, Havice, Hertzberg, Honda, House, Keeley, Knox, Kuehl, Leach, Leonard, Machado, Margett, Martinez, Mazzoni, McClintock, Migden, Miller, Morrissey, Napolitano, Morrow, Murray, Olberg, Pacheco, Papan, Poochigian, Prenter, Pringle, Scott, Strom-Martin, Sweeney, Torlakson, Villaraigosa, Vincent, Washington, Wayne, Wildman, Woods, and Wright)
69	ACR	158	Ducheny (Coauthors: Assembly Members Ackerman, Aguiar, Alquist, Aroner, Ashburn, Baca, Baldwin, Battin, Baugh, Bordonaro, Bowen, Brown, Campbell, Cardenas, Cardoza, Cedillo, Cunneen, Davis, Escutia, Figueroa, Frusetta, Gallegos, Granlund, Havice, Hertzberg, Honda, House, Kaloogian, Keeley, Knox, Kuehl, Leach, Lempert, Leonard, Machado, Margett, Martinez, Mazzoni, Migden, Miller, Morrissey, Morrow, Murray, Napolitano, Olberg, Oller, Pacheco, Perata, Poochigian, Prenter, Runner, Scott, Shelley, Strom-Martin, Sweeney, Takasugi, Thomson, Torlakson, Villaraigosa, Vincent, Washington, Wayne, Wildman, Woods, and Wright)
70	SCR	95	Solis, Alpert, Burton, Craven, O'Connell, Peace, Rosenthal, Thompson, Vasconcellos, Watson, and Wright (Coauthors: Assembly Members Baca, Brown, Bustamante, Figueroa, and Honda)
71	SCR	89	Johnston, Alpert, Ayala, Brulte, Burton, Costa, Dills, Greene, Hayden, Haynes, Hughes, Hurtt, Johannessen, Johnson, Karnette, Kelley, Knight, Kopp, Leslie, Lewis, Maddy, McPherson, Monteith, Mountjoy, O'Connell, Peace, Polanco, Rainey, Rosenthal, Schiff, Sher, Solis, Thompson, Vasconcellos, Watson, and Wright
72	ACR	160	Aroner, Torlakson, Ducheny, Lempert, and Vincent
73	SJR	41	Thompson, Alpert, Karnette, and McPherson (Coauthors: Assembly Members Bordonaro, Keeley, Machado, and Strom-Martin)
74	AJR	61	Ducheny, Knox, and Villaraigosa
75	ACR	87	Papan
76	ACR	168	Cardoza (Principal coauthor: Senator Costa) (Coauthors: Assembly Members Brown, Machado, Thomson, Ackerman, Aguiar, Alby, Alquist, Aroner, Ashburn, Baca, Battin, Bordonaro, Bowen, Bowler, Bustamante, Campbell, Cardenas, Cedillo, Cunneen, Davis, Ducheny, Figueroa, Firestone, Frusetta, Goldsmith, Havice, Hertzberg, House, Kaloogian, Keeley, Kuehl, Kuykendall, Leach, Lempert, Leonard, Martinez, Mazzoni, McClintock, Migden, Miller, Morrissey, Murray, Olberg, Oller, Ortiz, Papan, Perata, Poochigian, Prenter, Pringle, Runner, Scott, Shelley, Strom-Martin, Sweeney, Takasugi, Thompson, Torlakson, Villaraigosa, Vincent, Washington, Wayne, Wildman, and Woods) (Coauthor: Senator Monteith)
77	ACA	30	Murray (Principal coauthor: Assembly Member Brewer) (Principal coauthor: Senator Kopp) (Coauthors: Assembly Members Alquist, Ashburn, Baca, Battin, Cunneen, Granlund, Kuehl, Leach, Lempert, Machado, McClintock, Morrow, Olberg, Oller, Papan, Perata, Poochigian, Runner, Scott, Thomson, Torlakson, Vincent, Washington, and Wayne) (Coauthors: Senators McPherson, Rainey, and Watson)
78	ACR	147	Murray
79	SCR	75	Kopp
80	AJR	51	Ducheny and Knox
81	SJR	43	Polanco
82	AJR	63	Prenter (Coauthors: Assembly Members Campbell, Cunneen, Honda, Oller, Villaraigosa, Ackerman, Aguiar, Alby, Alquist, Aroner, Ashburn, Battin, Baugh, Bordonaro, Bowen, Bowler, Bustamante, Cardoza, Davis, Ducheny, Figueroa, Frusetta, Granlund, Havice, House, Kaloogian, Keeley, Knox, Kuehl, Kuykendall, Leach, Lempert, Leonard, Machado, Margett, Mazzoni, Miller, Morrissey, Murray, Napolitano, Olberg, Ortiz, Pacheco, Papan, Perata, Poochigian, Pringle, Richter, Runner, Shelley, Strom-Martin, Sweeney, Takasugi, Thompson, Thomson, Torlakson, Vincent, Washington, Wayne, Wildman, Woods, and Wright) (Coauthors: Senators Alpert, Karnette, Rosenthal, Schiff, and Solis)

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83	ACR	156	Gallegos, Aroner, Baca, Cardenas, Figueroa, Havice, Honda, Knox, Kuehl, Lempert, Machado, Martinez, Mazzoni, Scott, Strom-Martin, Sweeney, Thomson, Washington, Wayne, Wildman, and Wright (Coauthors: Senators Alpert, Costa, Dills, Hughes, Karnette, Solis, Vasconcellos, and Watson)
84	ACR	157	Wayne (Coauthor: Senator Peace)
85	ACR	162	Wildman
86	ACR	167	Machado
87	SCR	78	Rainey (Coauthor: Senator Kopp) (Coauthors: Assembly Members Papan and Torlakson)
88	ACR	97	Baca (Coauthors: Assembly Members Aguiar, Alquist, Baldwin, Bowen, Havice, Honda, Keeley, Knox, Margett, Morrissey, and Napolitano) (Coauthors: Senators Peace, Polanco, Solis, and Watson)
89	AJR	60	Richter, Alby, Baca, Bowler, and Ortiz (Coauthors: Senators Johnston and Leslie)
90	ACR	178	Pacheco and Senator Haynes
91	SCR	65	Kopp
92	SCR	68	Ayala (Principal coauthors: Senators Kopp and Johannessen) (Coauthors: Senators Brulte, Burton, Costa, Craven, Dills, Hayden, Hughes, Johnson, Kelley, Knight, Leslie, Lockyer, McPherson, O'Connell, Polanco, Rosenthal, Schiff, Sher, Solis, Thompson, Vasconcellos, Watson, and Wright) (Coauthors: Assembly Members Ackerman, Baca, Baldwin, Bowen, Brown, Cardenas, Cunneen, Figueroa, Floyd, Gallegos, Honda, Keeley, Knox, Kuykendall, Leach, Leonard, Machado, Margett, Migden, Morrissey, Morrow, Murray, Napolitano, Olberg, Richter, Runner, Scott, Shelley, Strom-Martin, Villaraigosa, Wayne, and Wildman)
93	SCR	69	Rainey, Burton, and Kopp
94	SCR	71	Hughes (Principal coauthor: Assembly Member Keeley) (Coauthor: Senator Watson) (Coauthors: Assembly Members Cardenas Cardoza, Cedillo, Havice, Knox, and Scott)
95	SCR	72	Thompson
96	SCR	74	Johnson, Craven, Hurtt, and Lewis (Coauthors: Assembly Members Ackerman, Baugh, Brewer, Campbell, Morrissey, and Morrow)
97	SCR	80	Monteith (Coauthors: Assembly Members Cardoza and House)
98	SCR	96	Kopp and Kelley
99	SJR	36	Johannessen (Coauthor: Senator Mountjoy) (Coauthors: Assembly Members House, Leach, Miller, Richter, Woods, Ackerman, Alby, Alquist, Ashburn, Baca, Baugh, Bowen, Bowler, Brown, Bustamante, Campbell, Cardoza, Cunneen, Figueroa, Frusetta, Granlund, Havice, Hertzberg, Honda, Kuehl, Lempert, Machado, Margett, Martinez, Mazzoni, McClintock, Morrissey, Morrow, Murray. Napolitano, Olberg, Ortiz, Poochigian, Prenter, Sweeney, Torlakson, Villaraigosa, Wayne, and Wildman)
100	ACR	84	Richter
101	SCR	67	Polanco
102	SCR	70	Thompson (Coauthor: Senator Burton)
103	SCR	81	Hayden
104	SCR	92	Peace (Principal coauthors: Senators Brulte and Polanco) (Principal coauthors: Assembly Members Baldwin and Ducheny) (Coauthors: Senators Alpert, Ayala, Burton, Calderon, Craven, Dills, Haynes, Hughes, Karnette, Kelley, Kopp, McPherson, Monteith, O'Connell, Rainey, Rosenthal, Schiff, Sher, Solis, Thompson, and Vasconcellos) (Coauthors: Assembly Members Aguiar, Alby, Alquist, Ashburn, Baca, Battin, Baugh, Bowler, Brewer, Bustamante, Campbell, Cardenas, Cardoza, Cedillo, Cunneen, Davis, Escutia, Figueroa, Firestone, Frusetta, Gallegos, Goldsmith, Granlund, Havice, Honda, Kaloogian, Knox, Kuykendall, Leach, Lempert, Leonard, Machado, Margett, Mazzoni, Morrissey, Morrow, Olberg, Oller, Pacheco, Poochigian, Prenter, Richter, Runner, Shelley, Strom-Martin, Takasugi, Thompson, Thomson, Torlakson, Villaraigosa, Vincent, Wayne, Woods, and Wright)
105	ACR	146	Ducheny, Baca, Bustamante, Cardenas, Cedillo, Escutia, Figueroa, Gallegos, Havice, Martinez, Napolitano, Ortiz, and Villaraigosa (Coauthors: Senators Ayala, Calderon, Polanco, and Solis)
106	ACR	159	Cedillo
107	ACR	105	Oller (Principal coauthors: Senators Johnston and Leslie)
108	ACR	179	Perata
109	SCR	64	Alpert and Thompson (Coauthor: Senator O'Connell) (Coauthor: Assembly Member Strom-Martin)
110	SCR	90	Alpert, Kopp, Lockyer, Schiff, Vasconcellos, and Watson (Coauthors: Assembly Members Alquist, Baca, Baldwin, Davis, Gallegos, Honda, Knox, Machado, Napolitano, Villaraigosa, and Wayne)
111	ACR	165	Kaloogian (Coauthors: Senators Haynes and Monteith)
112	ACR	177	Napolitano (Principal coauthor: Senator Polanco) (Coauthors: Assembly Members Ackerman, Alquist, Baca, Baldwin, Battin, Escutia, Floyd, Havice, Margett, Murray, Scott, Aguiar, Aroner, Ashburn, Baugh, Bordonaro, Brown, Bustamante, Campbell, Cardoza, Cedillo, Cunneen, Davis, Ducheny, Figueroa, Frusetta, Goldsmith, Granlund, Hertzberg, Honda, House, Kaloogian, Keeley, Knox, Kuehl, Leach, Lempert, Leonard, Machado, Mazzoni, McClintock, Migden, Morrissey, Morrow, Olberg, Oller, Papan, Perata, Poochigian, Prenter, Pringle, Richter, Runner, Shelley, Strom-Martin, Sweeney, Thompson, Thomson, Torlakson, Villaraigosa, Vincent, Washington, Wayne, Wildman, and Woods) (Coauthors: Senators Alpert, Ayala, Burton, Calderon, Costa, Dills, Greene, Haynes, Hughes, Johannessen, Johnson, Karnette, Kelley, Knight, Kopp, Leslie, Lewis, Monteith, Mountjoy, O'Connell, Peace, Polanco, Rainey, Schiff, Sher, Solis, Thompson, Watson, and Wright)
113	ACR	81	Scott
114	SJR	30	Karnette
115	SCR	82	Johannessen
116	ACR	175	Ashburn (Coauthors: Assembly Members Ackerman, Aguiar, Alby, Baca, Baldwin, Battin, Bordonaro, Bowler, Brown, Bustamante, Cardenas, Cardoza, Cedillo, Cunneen, Davis, Escutia, Figueroa, Firestone, Frusetta, Gallegos, Goldsmith, Granlund, Havice, Hertzberg, Honda, House, Keeley, Knox, Kuehl, Kuykendall, Leach, Lempert, Leonard, Machado, Margett, Martinez, Mazzoni, McClintock,

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			Migden, Miller, Morrissey, Morrow, Napolitano, Olberg, Oller, Ortiz, Pacheco, Papan, Perata, Poochigian, Prenter, Pringle, Richter, Runner, Scott, Shelley, Strom-Martin, Sweeney, Thompson, Thomson, Torlakson, Villaraigosa, Vincent, Washington, Wayne, Wildman, and Woods)
117	AJR	56	Aguiar, Alquist, Ashburn, Cunneen, Frusetta, Gallegos, Knox, Leach, Lempert, Machado, Margett, Ortiz, Pringle, Runner, Takasugi, Torlakson, Villaraigosa, and Wayne (Coauthors: Senators Alpert and Costa)
118	SCR	86	Hughes (Coauthors: Senators Alpert, Costa, Karnette, Lockyer, Polanco, Rainey, Solis, Thompson, Vasconcellos, Watson, and Wright) (Coauthors: Assembly Members Baca, Brown, Campbell, Honda, Knox, Kuehl, Scott, Shelley, Sweeney, Thompson, and Vincent)
119	SCR	63	Solis
120	SCR	103	McPherson
121	SJR	38	Thompson
122	ACR	72	Baca (Coauthors: Assembly Members Campbell, Machado, Napolitano, Washington, and Wayne) (Coauthors: Senators Costa and Solis)
123	ACR	82	Baca (Principal Senate Coauthor: Senator Solis) (Coauthors: Assembly Members Aguiar, Alquist, Aroner, Ashburn, Bowler, Brown, Bustamante, Cardenas, Cardoza, Davis, Escutia, Gallegos, Goldsmith, Havice, Hertzberg, Honda, Knox, Kuehl, Lempert, Margett, Mazzoni, McClintock, Migden, Napolitano, Papan, Poochigian, Richter, Runner, Scott, Shelley, Sweeney, and Villaraigosa) (Coauthors: Senators Alpert, Brulte, Costa, Craven, Dills, Hayden, Hughes, Karnette, Kopp, Lewis, Lockyer, Monteith, Peace, Rainey, Sher, Vasconcellos, and Watson)
124	ACR	100	Thomson (Principal coauthor: Senator Thompson) (Coauthor: Assembly Member Brown)
125	ACR	148	Cedillo, Escutia, Gallegos, Knox, Kuehl, Napolitano, and Villaraigosa (Coauthors: Senators Hughes and Solis)
126	ACR	163	House
127	ACR	166	Wayne
128	AJR	49	Morrow (Coauthor: Senator Craven)
129	AJR	67	Floyd
130	AJR	70	Ortiz
131	AJR	72	Honda and Alquist (Coauthors: Assembly Members Ackerman, Aguiar, Alby, Ashburn, Baca, Baldwin, Battin, Baugh, Bordonaro, Bowen, Brown, Bustamante, Campbell, Cardenas, Cardoza, Cedillo, Cunneen, Davis, Ducheny, Figueroa, Frusetta, Goldsmith, Granlund, Havice, Hertzberg, House, Kaloogian, Keeley, Kuehl, Kuykendall, Leach, Lempert, Leonard, Machado, Martinez, Mazzoni, McClintock, Migden, Morrissey, Morrow, Murray, Napolitano, Olberg, Oller, Ortiz, Pacheco, Papan, Perata, Poochigian, Prenter, Pringle, Scott, Shelley, Strom-Martin, Sweeney, Thompson, Thomson, Torlakson, Villaraigosa, Vincent, Washington, Wayne, Wildman, and Wright) (Coauthor: Senator Vasconcellos)
132	SCR	93	Burton
133	ACA	10	Runner (Coauthor: Assembly Members Brown and Torlakson)
134	ACR	98	Baca
135	ACR	169	Wayne, Knox, and Machado (Principal coauthor: Assembly Member Bowen) (Coauthors: Assembly Members Aroner, Campbell, Cunneen, Davis, Gallegos, Havice, Honda, Kuehl, Leach, Lempert, Martinez, Morrissey, Murray, Napolitano, Oller, Perata, Shelley, Strom-Martin, Sweeney, Villaraigosa, and Washington) (Coauthors: Senators Alpert, Calderon, Costa, Karnette, Leslie, Lockyer, Solis, Vasconcellos, and Watson)
136	ACR	174	Strom-Martin, Aroner, Baca, Bowen, Brown, Davis, Figueroa, House, Keeley, Knox, Kuykendall, Mazzoni, Migden, Perata, Shelley, and Sweeney (Coauthors: Assembly Members Ackerman, Aguiar, Alby, Ashburn, Baldwin, Battin, Bordonaro, Bowler, Brewer, Bustamante, Cardenas, Cardoza, Cedillo, Cunneen, Ducheny, Escutia, Firestone, Frusetta, Gallegos, Goldsmith, Granlund, Havice, Hertzberg, Honda, Kuehl, Leach, Lempert, Leonard, Machado, Margett, Martinez, McClintock, Miller, Morrissey, Morrow, Murray, Napolitano, Olberg, Oller, Ortiz, Pacheco, Papan, Prenter, Pringle, Richter, Runner, Scott, Thompson, Thomson, Torlakson, Villaraigosa, Vincent, Washington, Wayne, Wildman, and Woods) (Coauthors: Senators Alpert, Costa, Dills, Hughes, Karnette, Lockyer, Polanco, Rosenthal, Sher, Solis, Vasconcellos, and Watson)
137	ACR	106	Oller
138	ACR	107	Oller
139	ACR	130	Oller
140	ACR	172	Cunneen
141	AJR	43	Baca, Alquist, Brown, Cardenas, Gallegos, Hertzberg, Honda, Kuehl, Machado, Mazzoni, Migden, Napolitano, Papan, Shelley, Sweeney, and Villaraigosa (Coauthors: Senators Brulte, Costa, Karnette, Peace, and Solis)
142	AJR	48	Richter
143	ACR	91	Papan
144	SCR	85	Alpert, Burton, Costa, Hughes, Kelley, Lewis, Maddy, McPherson, Polanco, Rainey, Schiff, and Vasconcellos (Coauthors: Assembly Members Brewer, Keeley, Kuehl, Leach, Leonard, Machado, Mazzoni, Murray, Ortiz, Strom-Martin, and Thomson)
145	SCR	99	Kelley (Coauthors: Senators Ayala, Costa, Hayden, Karnette, Monteith, Polanco, and Rainey) (Coauthor: Assembly Member Papan)
146	SJR	39	Thompson
147	SJR	40	Lockyer
148	SJR	45	Polanco and Kelley
149	ACR	64	Knox and Leonard
150	ACR	92	Morrow (Coauthor: Senator Craven)
151	ACR	133	Strom-Martin (Coauthor: Senator Thompson)
152	ACR	155	Lempert, Villaraigosa, Alquist, Baca, Baugh, Bowen, Brown, Bustamante, Cardenas, Cardoza, Cunneen, Davis, Ducheny, Escutia, Figueroa, Floyd, Frusetta, Gallegos, Goldsmith, Havice, Hertzberg, Honda, Keeley, Knox, Kuehl, Kuykendall, Machado, Martinez, Mazzoni, Migden,

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153	ACR	161	Strom-Martin
154	ACR	171	Lempert (Coauthor: Senator Sher)
155	ACR	184	Aguiar
156	AJR	76	Papan (Principal coauthors: Assembly Members Alquist, Poochigian, and Kaloogian)
157	SCR	44	Calderon
158	SCR	97	Kopp (Principal coauthor: Assembly Member Papan)
159	ACR	20	Cardoza (Principal coauthors: Assembly Members Bustamante, House, and Machado) (Principal coauthor: Senator Monteith)
160	ACR	176	Woods
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162	AJR	58	Pringle, Cunneen, Figueroa, Kaloogian, Lempert, Leonard, and Oller
163	AJR	71	Ortiz (Coauthors: Assembly Members Alquist, Aroner, Baca, Baugh, Bowen, Brown, Bustamante, Cardenas, Cardoza, Cedillo, Cunneen, Davis, Ducheny, Escutia, Figueroa, Frusetta, Honda, Keeley, Kuehl, Kuykendall, Lempert, Machado, Martinez, Mazzoni, Migden, Morrissey, Murray, Napolitano, Papan, Perata, Pringle, Richter, Scott, Shelley, Strom-Martin, Sweeney, Thomson, Villaraigosa, Vincent, Washington, Wayne, Wildman, and Woods)
164	AJR	77	Granlund, Bordonaro, Battin, Goldsmith, Alby, Bowler, Campbell, Cunneen, Ducheny, Leach, Leonard, Morrow, Oller, Pacheco, Papan, Perata, Poochigian, Pringle, Runner, Scott, Vincent, Woods, and Wright
165	ACR	142	Machado, Davis, and Wayne
166	ACR	145	Machado
167	ACR	190	Kaloogian
168	SCR	98	Hurtt, Alpert, and Schiff (Coauthors: Assembly Members Alby, Ashburn, Baldwin, Campbell, Cunneen, House, Margett, Morrissey, Morrow, Oller, Poochigian, Takasugi, and Woods)
169	SCR	101	Kopp
170	SCR	102	Costa (Coauthor: Assembly Member Poochigian)
171	SCR	104	Brulte, Ayala, Haynes, Kelley, and Knight (Coauthors: Assembly Members Aguiar, Baca, Battin, Granlund, Leonard, Olberg, and Pacheco)
172	SCR	105	Watson (Coauthor: Assembly Member Gallegos)
173	SCR	106	Schiff, Alpert, Ayala, Brulte, Burton, Calderon, Costa, Craven, Dills, Greene, Hayden, Haynes, Hughes, Hurtt, Johannessen, Johnson, Johnston, Karnette, Kelley, Knight, Kopp, Leslie, Lewis, Lockyer, Maddy, McPherson, Monteith, Mountjoy, O'Connell, Peace, Polanco, Rainey, Rosenthal, Sher, Solis, Thompson, Vasconcellos, Watson, and Wright (Coauthors: Assembly Members Ackerman, Aguiar, Alquist, Baca, Battin, Baugh, Bowler, Brown, Bustamante, Campbell, Cunneen, Davis, Ducheny, Escutia, Figueroa, Frusetta, Goldsmith, Granlund, Havice, Hertzberg, House, Kaloogian, Keeley, Knox, Kuykendall, Leach, Lempert, Leonard, Machado, Margett, Martinez, Mazzoni, McClintock, Migden, Miller, Morrissey, Morrow, Napolitano, Olberg, Oller, Poochigian, Prenter, Richter, Runner, Scott, Shelley, Sweeney, Torlakson, Villaraigosa, Vincent, Wayne, Wildman, and Woods)
174	ACR	99	Havice
175	ACR	183	Torlakson, Perata, Mazzoni, Honda, Bordonaro, and Wildman (Coauthor: Assembly Member Brewer)
176	ACR	185	Washington and Hertzberg
177	ACR	186	Alquist and Honda (Coauthors: Senators Kopp and Vasconcellos)
178	ACR	187	Papan
179	ACR	188	Davis, Alquist, Aroner, Baca, Kaloogian, Knox, Kuehl, Mazzoni, Oller, and Scott (Coauthors: Senators Karnette, Leslie, Solis, and Watson)
180	ACR	189	Frusetta
181	ACR	191	Alquist
182	ACR	192	Runner, Aguiar, Alby, Alquist, Ashburn, Baca, Bordonaro, Bowler, Campbell, Cunneen, Davis, Ducheny, Figueroa, Firestone, Goldsmith, Granlund, House, Kuykendall, Leach, Lempert, Leonard, McClintock, Miller, Morrissey, Olberg, Oller, Pacheco, Papan, Prenter, Pringle, Thompson, Thomson, Vincent, Wayne, Woods, and Wright (Coauthors: Senators Brulte, Haynes, Hughes, Hurtt, Johnson, Knight, Leslie, Maddy, McPherson, O'Connell, Rainey, Vasconcellos, and Wright)
183	AJR	59	Baca

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STATUTES OF CALIFORNIA

1997–98

REGULAR SESSION

1998 CHAPTERS

CHAPTER 1

An act to amend Section 42238.43 of the Education Code, relating to education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor February 10, 1998. Filed with Secretary of State February 10, 1998.]

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

SECTION 1. Section 42238.43 of the Education Code is amended to read:

42238.43. (a) (1) For the 1996–97 fiscal year, the county superintendent of schools, in conjunction with the Superintendent of Public Instruction, shall compute an equalization adjustment for each school district in the county, so that no district's base revenue limit per unit of average daily attendance is less than the 1996–97 fiscal year statewide average base revenue limit for the appropriate size and type of district listed in subdivision (b).

(2) For purposes of this section, the district base revenue limit and the statewide average base revenue limit shall not include any amounts attributable to Section 45023.4, 46200, or 46201.

(b) Subdivision (a) shall apply to the following school districts, which shall be grouped according to size and type as follows:

District	ADA
Elementary	less than 101
Elementary	more than 100
High School	less than 301
High School	more than 300
Unified	less than 1,501
Unified	more than 1,500

(c) The equalization adjustment computed pursuant to this section shall only be funded from amounts appropriated for that purpose pursuant to Section 42238.42.

(d) (1) For the purposes of the computation made pursuant to paragraph (1) of subdivision (e) of Section 42238.42, the 1996–97 statewide average base revenue limits determined for the purposes of subdivision (a) and the fraction, if any, computed pursuant to paragraph (3) of subdivision (e) of Section 42238.42 by the Superintendent of Public Instruction for the 1996–97 second principal apportionment shall be final, and shall not be calculated as subsequent apportionments. In no event shall the fraction computed pursuant to paragraph (3) of subdivision (e) of Section 42238.42 exceed 1.00. If any iterations are required pursuant to paragraph (2)

of Section 42238.42, the Superintendent of Public Instruction shall recompute the 1996–97 statewide average base revenue limit to include any adjustments made by the immediately preceding iteration.

(2) (A) For the purposes of determining the size of a school district under subdivision (b), the Superintendent of Public Instruction shall use a school district's revenue limit average daily attendance for the 1996–97 fiscal year as determined pursuant to Section 42238.5 and Article 4 (commencing with Section 42280).

(B) Notwithstanding subparagraph (A), for the purposes of determining the size of a school district under subdivision (b) with respect to any elementary, high, or unified school district that was funded in the 1996–97 school year as a large elementary, high, or unified school district, as determined pursuant to subdivision (a) of Section 42238.5, the school district's actual revenue limit average daily attendance for the 1996–97 school year may be used. The actual revenue limit average daily attendance for the 1996–97 school year shall be used to calculate the 1996–97 revenue limit of a school district exercising the authority granted under this subparagraph. The governing board of a school district to which this subparagraph is applicable may exercise the authority granted under this subparagraph by enacting a resolution to that effect and transmitting a copy of that resolution to the Superintendent of Public Instruction on or before a date designated by the Superintendent of Public Instruction for that school year. After the Superintendent of Public Instruction receives the resolution, the superintendent shall make the necessary adjustments to the school district's revenue limit calculation.

SEC. 2. (a) Notwithstanding Section 54902, 54902.1, or 54903 of the Government Code, the boundary changes affecting the Rincon Valley Union Elementary School District and the City of Santa Rosa Elementary School District, both of which were reorganized with the approval of the Sonoma County Committee on School District Organization on November 5, 1997, and by order of the Sonoma County Board of Supervisors on December 16, 1997, shall become effective for assessment and taxation purposes for the 1998–99 fiscal year, if the statement and map or plat required by Section 54900 of the Government Code are filed with the assessor and the State Board of Equalization on or before January 31, 1998.

(b) Notwithstanding Section 54902, 54902.1, or 54903 of the Government Code, the unification of the Eureka City High School District and the Eureka City Elementary District, forming the Eureka Unified School District, with the approval of the voters on November 4, 1997, and by order of the Humboldt County Board of Supervisors on December 16, 1997, shall become effective for assessment and taxation purposes for the 1998–99 fiscal year, if the statement and map or plot required by Section 54900 of the

Government Code are filed with the assessor and the State Board of Equalization on or before January 31, 1998.

(c) This section shall become inoperative on February 1, 1998. This section shall remain in effect only until December 1, 1998, and as of that date is repealed. The inoperative date and repeal of this section shall not be construed to deprive any district of any substantial right that would have existed had the inoperative date and repeal not been effected.

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:

So that funds may be efficiently and equitably apportioned in February 1998 to certain school districts that were funded as large unified school districts in the 1996–97 school year but that were small unified school districts on the basis of actual 1996–97 school year average daily attendance and to allow the boundary and district changes described in Section 2 to be effective for assessment and taxation purposes for the 1998–99 fiscal year, it is necessary that this act take effect immediately.

CHAPTER 2

An act to amend Section 14 of Chapter 7 of the 1997–98 First Extraordinary Session, relating to natural hazards, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor February 28, 1998. Filed with Secretary of State February 28, 1998.]

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

SECTION 1. Section 14 of Chapter 7 of the 1997–98 First Extraordinary Session, is amended to read:

Sec. 14. Sections 1, 2, 4, 7, 8, 9, 10, 11, and 12 of Chapter 7 of the 1997–98 First Extraordinary Session shall become operative on June 1, 1998.

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

In order to provide real estate licensees, local public entities, and state agencies additional time to prepare to comply with the requirements of Chapter 7 of the Statutes of the First Extraordinary Session of 1997, it is necessary that this bill take effect immediately.

CHAPTER 3

An act to add and repeal Section 42250.2 of the Education Code, relating to school facilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor March 2, 1998. Filed with Secretary of State March 2, 1998.]

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

SECTION 1. Section 42250.2 is added to the Education Code, to read:

42250.2. (a) Notwithstanding any other provision of law, the State Allocation Board may waive the repayment requirement set forth in subdivision (c) of Section 42250.1 for the Amador County Unified School District if the State Allocation Board finds that there is hardship due to declining enrollment or no growth. The authority to waive provided by this section shall apply only to funds allocated in accordance with Section 42250.1 to the Amador County Unified School District during the 1993–94 and 1994–95 school years.

(b) This section 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. Due to the unique circumstances of the Amador County Unified School District because of pupil enrollment demographics, the Legislature hereby finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution. This special legislation is, therefore, necessarily applicable only to the Amador County Unified School District.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the State Allocation Board to grant a repayment waiver to the Amador County Unified School District, which has suffered from declining enrollment, it is necessary for this act to take effect immediately.

CHAPTER 4

An act to amend Sections 63000, 63010, 63021, 63025.1, 63026, 63055, and 63071 of, to amend and renumber Sections 63042 and 63048 of, to amend and renumber the headings of Article 4 (commencing with Section 63042) and Article 6 (commencing with Section 63048) of Chapter 2 of Division 1 of Title 6.7 of, to add Sections 63027, 63028,

63040, 63084, 63085, 63086, and 63087 to, to repeal Section 63001 of, to repeal Article 3 (commencing with Section 63040) of Chapter 2 of Division 1 of Title 6.7 of, to repeal the heading of Article 1 (commencing with Section 63050) of Chapter 3 of Division 1 of Title 6.7 of, to repeal Part 10.2 (commencing with Section 15710) of Division 3 of Title 2 of, and to repeal and add Article 5 (commencing with Section 63043) of Chapter 2 of Division 1 of Title 6.7 of, the Government Code, relating to state infrastructure.

[Approved by Governor March 2, 1998. Filed with Secretary of State March 2, 1998.]

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

SECTION 1. Part 10.2 (commencing with Section 15710) of Division 3 of Title 2 of the Government Code is repealed.

SEC. 2. Section 63000 of the Government Code is amended to read:

63000. The Legislature finds and declares the following:

(a) Economic revitalization, future development, and a healthy climate for jobs in California will depend upon a well-conceived system of public improvements that are essential to the economic well-being of the citizens of the state and are necessary to maintain, as well as create, employment within the state for business.

(b) It is necessary for public policy to support the efforts of businesses attempting to expand, businesses seeking to locate in California, and local economic development organizations, public agencies, and new entrepreneurs by dedicating public fiscal resources to confront obstacles and barriers that impede economic growth.

(c) Existing mechanisms that coordinate federal, state, local, and private financial resources are inadequate to attract and sustain that level of private investment that is essential to a growth economy.

(d) In order to secure and enhance the economic well-being of Californians, promote economic development in the state, and provide a healthy climate for the creation of jobs, it is necessary for public policy to support the efforts of expanding businesses, businesses seeking to locate in California, local development organizations, public bodies, and new entrepreneurs to gain access to capital through current and potential operations of financial markets.

(e) The high cost and the lack of availability of industrial loans for small- and medium-size businesses is making it difficult for thousands of these enterprises to get established, to maintain their present employment levels, or to expand employment.

(f) The problem of access to capital is acute in the high technology industry clusters because companies must often finance large capital expenditures early in their development cycle, and cannot obtain

financing sufficient to cover the cost of those expenditures. Consideration should be given to industry clusters identified by the Economic Strategy Panel that may include the following:

(1) Health care technology.

(2) Multimedia.

(3) Environmental technology.

(4) Information technology.

(g) The high cost and limited availability of loans and capital has led a number of states to take action to remedy these conditions through concerted public and private investment programs that include efforts to do the following:

(1) Use the state's access to capital markets more effectively for economic development.

(2) Create financing pools to access national capital markets or help government sponsors and public-private economic development organizations obtain credit enhancement on their own.

(3) Facilitate credit enhancement for selected specific projects.

(4) Provide or arrange for loan insurance.

(5) Create and support secondary markets for loan portfolios of urban and rural economic development corporations and others.

(6) Improve access to international capital markets.

(7) Provide opportunities for public pension funds and other institutional investors to play a larger role in state economic development.

(8) Arrange for or provide subordinated debt for selected projects.

(9) Increase support for local infrastructure development.

(h) Local governments in California bear a primary responsibility for the business of promoting job creation and economic development efforts. California's continued reliance on autonomous local entities often fails to adequately consider regional impacts of business expansion. Projects of a regional nature need the benefit of a state coordinating function to augment and enhance local economic development and environmental efforts.

(i) The State of California has not embarked on a major infrastructure financing effort since the decade of the 1960's, despite persistent unemployment and soaring population growth.

(j) California's ability to compete in a global economy depends upon its capacity to implement policies that take maximum advantage of public and private resources at the local, regional, state, and national levels. These policies should be coordinated with any future legislative plan involving growth management strategies designed to make economic growth compatible with environmental protections. It is the intent of the Legislature in enacting this act to create a mechanism to finance projects needed to implement economic development and job creation and growth management strategies, and to provide a secure and stable funding source for

implementation of this act in order to meet critical economic, social, and environmental concerns.

(k) The State of California needs a financing entity structured with broad authority to issue bonds, provide guarantees, and leverage state and federal funds using techniques that will target public investment to facilitate economic development. The goal is to produce more private sector jobs with less public sector investment.

(*l*) The mechanisms for financing public improvements and private job creation strategies provided for in this act are in the public interest, serve a public purpose, and will promote the health, welfare, and safety of the citizens of the state.

(m) The public policies and responsibilities of the state, including all of the above purposes and functions, cannot be fully obtained without the use of financing assistance and can be most effectively furthered by the creation of the California Infrastructure and Economic Development Bank.

SEC. 3. Section 63001 of the Government Code is repealed.

SEC. 4. Section 63010 of the Government Code is amended to read:

63010. For purposes of this division, the following words and terms shall have the following meanings unless the context clearly indicates or requires another or different meaning or intent:

(a) "Act" means the Bergeson-Peace Infrastructure and Economic Development Bank Act.

(b) "Bank" means the California Infrastructure and Economic Development Bank.

(c) "Board" or "bank board" means the Board of Directors of the California Infrastructure and Economic Development Bank.

(d) "Bond purchase agreement" means a contractual agreement executed between the bank and a sponsor, or a special purpose trust authorized by the bank or a sponsor, or both, whereby the bank or special purpose trust authorized by the bank agrees to purchase bonds of the sponsor for retention or sale.

(e) "Bonds" means bonds, including structured, senior, and subordinated bonds or other securities; loans; notes, including bond, revenue, tax or grant anticipation notes; commercial paper; floating rate and variable maturity securities; and any other evidences of indebtedness or ownership, including certificates of participation or beneficial interest, asset backed certificates, or lease-purchase or installment purchase agreements, whether taxable or excludable from gross income for federal income taxation purposes.

(f) "Cost," as applied to a project or portion thereof financed under this division, means all or any part of the cost of construction, renovation, and acquisition of all lands, structures, real or personal property, rights, rights-of-way, franchises, licenses, easements, and interests acquired or used for a project; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which the buildings or structures

may be moved; the cost of all machinery, equipment, and financing charges; interest prior to, during, and for a period after, completion of construction, renovation, or acquisition, as determined by the bank; provisions for working capital; reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations, and improvements; and the cost of architectural, engineering, financial and legal services, plans, specifications, estimates, administrative expenses, and other expenses necessary or incidental to determining the feasibility of any project or incidental to the construction, acquisition, or financing of any project, and transition costs in the case of an electrical corporation.

(g) "Economic development facilities" means real and personal property, structures, buildings, equipment, and supporting components thereof that are used to provide industrial, recreational, research, commercial, utility, or service enterprise facilities, community, educational, cultural, or social welfare facilities and any parts or combinations thereof, and all facilities or infrastructure necessary or desirable in connection therewith, including provision for working capital, but shall not include any housing.

(h) "Electrical corporation" has the meaning set forth in Section 218 of the Public Utilities Code.

(i) "Executive director" means the Executive Director of the California Infrastructure and Economic Development Bank appointed pursuant to Section 63021.

(j) "Financial assistance" in connection with a project, includes, but is not limited to, any combination of grants, loans, the proceeds of bonds issued by the bank or special purpose trust, insurance, guarantees or other credit enhancements or liquidity facilities, and contributions of money, property, labor, or other things of value, as may be approved by resolution of the board or the sponsor, or both; the purchase or retention of bank bonds, the bonds of a sponsor for their retention or for sale by the bank, or the issuance of bank bonds or the bonds of a special purpose trust used to fund the cost of a project for which a sponsor is directly or indirectly liable, including, but not limited to, bonds, the security for which is provided in whole or in part pursuant to the powers granted by Section 63025; bonds for which the bank has provided a guarantee or enhancement, including, but not limited to, the purchase of the subordinated bonds of the sponsor, the subordinated bonds of a special purpose trust, or the retention of the subordinated bonds of the bank pursuant to Chapter 4 (commencing with Section 63060); or any other type of assistance deemed appropriate by the bank or the sponsor, except that no direct loans shall be made to nonpublic entities other than in connection with the issuance of rate reduction bonds pursuant to a financing order or in connection with a financing for an economic development facility.

For purposes of this subdivision, "grant" does not include grants made by the bank except when acting as an agent or intermediary

for the distribution or packaging of financing available from federal, private, or other public sources.

(k) "Financing order" has the meaning set forth in Section 840 of the Public Utilities Code.

(*l*) "Guarantee trust fund" means the California Infrastructure Guarantee Trust Fund.

(m) "Infrastructure bank fund" means the California Infrastructure and Economic Development Bank Fund.

(n) "Loan agreement" means a contractual agreement executed between the bank or a special purpose trust and a sponsor that provides that the bank or special purpose trust will loan funds to the sponsor and that the sponsor will repay the principal and pay the interest and redemption premium, if any, on the loan.

(o) "Participating party" means any person, company, corporation, partnership, firm, or other entity or group of entities, whether organized for profit or not for profit, engaged in business or operations within the state and that applies for financing from the bank in conjunction with a sponsor for the purpose of implementing a project. However, in the case of a project relating to the financing of transition costs or the acquisition of transition property, or both, on the request of an electrical corporation, or in connection with a financing for an economic development facility, the participating party shall be deemed to be the same entity as the sponsor for the financing.

(p) "Project" means designing, acquiring, planning, permitting, entitling, constructing, improving, extending, restoring, financing, and generally developing public development facilities or economic development facilities within the state or financing transition costs or the acquisition of transition property, or both, upon approval of a financing order by the Public Utilities Commission, as provided in Article 5.5 (commencing with Section 840) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code.

(q) "Public development facilities" means real and personal property, structures, conveyances, equipment, thoroughfares, buildings, and supporting components thereof, excluding any housing, that are directly related to providing the following:

(1) "City streets" including any street, avenue, boulevard, road, parkway, drive, or other way that is any of the following:

(A) An existing municipal roadway.

(B) Is shown upon a plat approved pursuant to law and includes the land between the street lines, whether improved or unimproved, and may comprise pavement, bridges, shoulders, gutters, curbs, guardrails, sidewalks, parking areas, benches, fountains, plantings, lighting systems, and other areas within the street lines, as well as equipment and facilities used in the cleaning, grading, clearance, maintenance, and upkeep thereof.

(2) "County highways" including any county highway as defined in Section 25 of the Streets and Highways Code, that includes the land

between the highway lines, whether improved or unimproved, and may comprise pavement, bridges, shoulders, gutters, curbs, guardrails, sidewalks, parking areas, benches, fountains, plantings, lighting systems, and other areas within the street lines, as well as equipment and facilities used in the cleaning, grading, clearance, maintenance, and upkeep thereof.

(3) "Drainage and flood control" including ditches, canals, levees, pumps, dams, conduits, pipes, storm sewers, and dikes necessary to keep or direct water away from people, equipment, buildings, and other protected areas as may be established by lawful authority, as well as the acquisition, improvement, maintenance, and management of floodplain areas and all equipment used in the maintenance and operation of the foregoing.

(4) "Educational facilities" including libraries, child care facilities, including, but not limited to, day care facilities, and employment training facilities.

(5) "Environmental mitigation measures" including required construction or modification of public infrastructure and purchase and installation of pollution control and noise abatement equipment.

(6) "Parks and recreational facilities" including local parks, recreational property and equipment, parkways and property.

(7) "Port facilities" including docks, harbors, ports of entry, piers, ships, small boat harbors and marinas, and any other facilities, additions, or improvements in connection therewith.

(8) "Communications" including facilities for telephone and telecommunications service.

(9) "Public transit" including air and rail transport of goods, airports, guideways, vehicles, rights-of-way, passenger stations, maintenance and storage yards, and related structures, including public parking facilities, equipment used to provide or enhance transportation by bus, rail, ferry, or other conveyance, either publicly or privately owned, that provides to the public general or special service on a regular and continuing basis.

(10) "Sewage collection and treatment" including pipes, pumps, and conduits that collect wastewater from residential, manufacturing, and commercial establishments, the equipment, structures, and facilities used in treating wastewater to reduce or eliminate impurities or contaminants, and the facilities used in disposing of, or transporting, remaining sludge, as well as all equipment used in the maintenance and operation of the foregoing.

(11) "Solid waste collection and disposal" including vehicles, vehicle-compatible waste receptacles, transfer stations, recycling centers, sanitary landfills, and waste conversion facilities necessary to remove solid waste, except that which is hazardous as defined by law, from its point of origin.

(12) "Water treatment and distribution" including facilities in which water is purified and otherwise treated to meet residential,

manufacturing, or commercial purposes and the conduits, pipes, and pumps that transport it to places of use.

(13) "Defense conversion" including, but not limited to, facilities necessary for successfully converting military bases consistent with an adopted base reuse plan.

(14) "Public safety facilities" including, but not limited to, police stations, fire stations, court buildings, jails, juvenile halls, and juvenile detention facilities.

(15) "State highways" including any state highway as described in Chapter 2 (commencing with Section 230) of Division 1 of the Streets and Highways Code, and the related components necessary for safe operation of the highway.

(r) "Rate reduction bonds" has the meaning set forth in Section 840 of the Public Utilities Code.

(s) "Revenues" means all receipts, purchase payments, loan repayments, lease payments, and all other income or receipts derived by the bank or a sponsor from the sale, lease, or other financing arrangement undertaken by the bank, a sponsor or a participating party, including, but not limited to, all receipts from a bond purchase agreement, and any income or revenue derived from the investment of any money in any fund or account of the bank or a sponsor and any receipts derived from transition property. Revenues shall not include moneys in the General Fund of the state.

(t) "Special purpose trust" means a trust, partnership, limited partnership, association, corporation, nonprofit corporation, or other entity authorized under the laws of the state to serve as an instrumentality of the state to accomplish public purposes and authorized by the bank to acquire, by purchase or otherwise, for retention or sale, the bonds of a sponsor or of the bank made or entered into pursuant to this division and to issue special purpose trust bonds or other obligations secured by these bonds or other sources of public or private revenues. Special purpose trust also means any entity authorized by the bank to acquire transition property or to issue rate reduction bonds, or both, subject to the approvals by the bank and powers of the bank as are provided by the bank in its resolution authorizing the entity to issue rate reduction bonds.

(u) "Sponsor" means any subdivision of the state or local government including departments, agencies, commissions, cities, counties, nonprofit corporations formed on behalf of a sponsor, special districts, assessment districts, and joint powers authorities within the state or any combination of these subdivisions that has, or proposes to acquire, an interest in a project and that makes application to the bank for financial assistance in connection with a project in a manner prescribed by the bank. In addition, an electrical corporation shall be deemed to be the sponsor as well as the participating party for any project relating to the financing of transition costs and the acquisition of transition property on the

request of the electrical corporation and any person, company, corporation, partnership, firm, or other entity or group engaged in business or operation within the state that applies for financing of any economic development facility, shall be deemed to be the sponsor as well as the participating party for the project relating to the financing of that economic development facility.

(v) "State" means the State of California.

(w) "Transition costs" has the meaning set forth in Section 840 of the Public Utilities Code.

(x) "Transition property" has the meaning set forth in Section 840 of the Public Utilities Code.

SEC. 5. Section 63021 of the Government Code is amended to read:

63021. (a) There is within the Trade and Commerce Agency the Infrastructure and Economic Development Bank which shall be responsible for administering this division.

(b) The bank shall be under the direction of an executive director appointed by the Governor, and who shall serve at the pleasure of the Governor. The appointment shall be subject to confirmation by the Senate.

SEC. 6. Section 63025.1 of the Government Code is amended to read:

63025.1. The bank board may do or delegate the following to the executive director:

(a) Sue and be sued in its own name.

(b) As provided in Chapter 5 (commencing with Section 63070), issue bonds and authorize special purpose trusts to issue bonds, including, at the option of the board, bonds bearing interest that is taxable for the purpose of federal income taxation, or borrow money to pay all or any part of the cost of any project, or to otherwise carry out the purposes of this division.

(c) Engage the services of private consultants to render professional and technical assistance and advice in carrying out the purposes of this division.

(d) Employ attorneys, financial consultants, and other advisers as may, in the bank's judgment, be necessary in connection with the issuance and sale, or authorization of special purpose trusts for the issuance and sale, of any bonds, notwithstanding Sections 11042 and 11043.

(e) Contract for engineering, architectural, accounting, or other services of appropriate state agencies as may, in its judgment, be necessary for the successful development of a project.

(f) Pay the reasonable costs of consulting engineers, architects, accountants, and construction, land use, recreation, and environmental experts employed by any sponsor or participating party if, in the bank's judgment, those services are necessary for the successful development of a project.

(g) Acquire, take title to, and sell by installment sale or otherwise, lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and other interests in lands that are located within the state, or transition property as the bank may deem necessary or convenient for the financing of the project, upon terms and conditions that it considers to be reasonable.

(h) Receive and accept from any source including, but not limited to, the federal government, the state, or any agency thereof, loans, contributions, or grants, in money, property, labor, or other things of value, for, or in aid of, a project, or any portion thereof.

(i) Make loans to any sponsor or participating party, either directly or by making a loan to a lending institution, in connection with the financing of a project in accordance with an agreement between the bank and the sponsor or a participating party, either as a sole lender or in participation with other lenders. However, no loan shall exceed the total cost of the project as determined by the sponsor or the participating party and approved by the bank.

(j) Make loans to any sponsor or participating party, either directly or by making a loan to a lending institution, in accordance with an agreement between the bank and the sponsor or participating party to refinance indebtedness incurred by the sponsor or participating party in connection with projects undertaken and completed prior to any agreement with the bank or expectation that the bank would provide financing, either as a sole lender or in participation with other lenders.

(k) Mortgage all or any portion of the bank's interest in a project and the property on which any project is located, whether owned or thereafter acquired, including the granting of a security interest in any property, tangible or intangible.

(*l*) Assign or pledge all or any portion of the bank's interests in transition property and the revenues therefrom, or assets, things of value, mortgages, deeds of trust, bonds, bond purchase agreements, loan agreements, indentures of mortgage or trust, or similar instruments, notes, and security interests in property, tangible or intangible and the revenues therefrom, of a sponsor or a participating party to which the bank has made loans, and the revenues therefrom, including payment or income from any interest owned or held by the bank, for the benefit of the holders of bonds.

(m) Make, receive, or serve as a conduit for the making of, or otherwise provide for, grants, contributions, guarantees, insurance, credit enhancements or liquidity facilities, or other financial enhancements to a sponsor or a participating party as financial assistance for a project.

(n) Lease the project being financed to a sponsor or a participating party, upon terms and conditions that the bank deems proper but shall not be leased at a loss; charge and collect rents therefor; terminate any lease upon the failure of the lessee to comply with any of the obligations thereof; include in any lease, if desired,

provisions that the lessee shall have options to renew the lease for a period or periods, and at rents determined by the bank; purchase any or all of the project; or, upon payment of all the indebtedness incurred by the bank for the financing of the project, the bank may convey any or all of the project to the lessee or lessees.

(o) Charge and equitably apportion among sponsors and participating parties the bank's administrative costs and expenses incurred in the exercise of the powers and duties conferred by this division.

(p) Issue, obtain, or aid in obtaining, from any department or agency of the United States, from other agencies of the state, or from any private company, any insurance or guarantee to, or for, the payment or repayment of interest or principal, or both, or any part thereof, on any loan, lease, or obligation or any instrument evidencing or securing the same, made or entered into pursuant to this division.

(q) Notwithstanding any other provision of this division, enter into any agreement, contract, or any other instrument with respect to any insurance or guarantee; accept payment in the manner and form as provided therein in the event of default by a sponsor or a participating party; and issue or assign any insurance or guarantee as security for the bank's bonds.

(r) Enter into any agreement or contract, execute any instrument, and perform any act or thing necessary or convenient to, directly or indirectly, secure the bank's bonds, the bonds issued by a special purpose trust, or a sponsor's obligations to the bank or to a special purpose trust, including, but not limited to, bonds of a sponsor purchased by the bank or a special purpose trust for retention or sale, with funds or moneys that are legally available and that are due or payable to the sponsor by reason of any grant, allocation, apportionment or appropriation of the state or agencies thereof, to the extent that the Controller shall be the custodian at any time of these funds or moneys, or with funds or moneys that are or will be legally available to the sponsor, the bank, or the state or any agencies thereof by reason of any grant, allocation, apportionment, or appropriation of the federal government or agencies thereof; and in the event of written notice that the sponsor has not paid or is in default on its obligations to the bank or a special purpose trust, direct the Controller to withhold payment of those funds or moneys from the sponsor over which it is or will be custodian and to pay the same to the bank or special purpose trust or their assignee, or direct the state or any agencies thereof to which any grant, allocation, apportionment or appropriation of the federal government or agencies thereof is or will be legally available to pay the same upon receipt by the bank or special purpose trust or their assignee, until the default has been cured and the amounts then due and unpaid have been paid to the bank or special purpose trust or their assignee,

or until arrangements satisfactory to the bank or special purpose trust have been made to cure the default.

(s) Enter into any agreement or contract, execute any instrument, and perform any act or thing necessary, convenient, or appropriate to carry out any power expressly given to the bank by this division, including, but not limited to, agreements for the sale of all or any part, including principal, interest, redemption rights or any other rights or obligations, of bonds of the bank or of a special purpose trust, liquidity agreements, contracts commonly known as interest rate swap agreements, forward payment conversion agreements, futures or contracts providing for payments based on levels of, or changes in, interest rates or currency exchange rates, or contracts to exchange cash-flows or a series of payments, or contracts, including options, puts or calls to hedge payments, rate, spread, currency exchange, or similar exposure, or any other financial instrument commonly known as a structured financial product.

(t) Purchase, with the proceeds of the bank's bonds, transition property or bonds issued by, or for the benefit of, any sponsor in connection with a project, pursuant to a bond purchase agreement or otherwise. Bonds or transition property purchased pursuant to this division may be held by the bank, pledged or assigned by the bank, or sold to public or private purchasers at public or negotiated sale, in whole or in part, separately or together with other bonds issued by the bank, and notwithstanding any other provision of law, may be bought by the bank at private sale.

(u) Enter into purchase and sale agreements with all entities, public and private, including state and local government pension funds, with respect to the sale or purchase of bonds or transition property.

(v) Invest any moneys held in reserve or sinking funds, or any moneys not required for immediate use or disbursement, in obligations that are authorized by law for the investment of trust funds in the custody of the Treasurer.

(w) Authorize a special purpose trust or trusts to purchase or retain, with the proceeds of the bonds of a special purpose trust, transition property or bonds issued by, or for the benefit of, any sponsor in connection with a project or issued by the bank or a special purpose trust, pursuant to a bond purchase agreement or otherwise. Bonds or transition property purchased pursuant to this title may be held by a special purpose entity, pledged or assigned by a special purpose entity, or sold to public or private purchasers at public or negotiated sale, in whole or in part, with or without structuring, subordination or credit enhancement, separately or together with other bonds issued by a special purpose trust, and notwithstanding any other provision of law, may be bought by the bank or by a special purpose trust at private sale.

(x) Approve the issuance of any bonds, notes, or other evidences of indebtedness by the Rural Economic Development Infrastructure Panel, established pursuant to Section 15373.7.

(y) Approve the issuance of rate reduction bonds by an entity other than the bank or a special purpose trust to acquire transition property upon approval of the transaction in a financing order by the Public Utilities Commission, as provided in Article 5.5 (commencing with Section 840) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code.

(z) Apply for and accept subventions, grants, loans, advances, and contributions from any source of money, property, labor, or other things of value. The sources may include bond proceeds, dedicated taxes, state appropriations, federal appropriations, federal grant and loan funds, public and private sector retirement system funds, and proceeds of loans from the Pooled Money Investment Account.

(aa) Do all things necessary and convenient to carry out its purposes and exercise its powers, provided, however, that nothing herein shall be construed to authorize the bank to engage directly in the business of a manufacturing, industrial, real estate development, or nongovernmental service enterprise. Further, the bank shall not be organized to accept deposits of money for time or demand deposits or to constitute a bank or trust company.

SEC. 7. Section 63026 of the Government Code is amended to read:

63026. The fiscal powers granted to the bank by this part may be exercised without regard or reference to any other department, division, or agency of the state, except the Legislature. This division shall be deemed to provide an alternative method of doing the things authorized by this division, and shall be regarded as supplemental and additional to powers conferred by other laws.

SEC. 8. Section 63027 is added to the Government Code, to read:

63027. (a) The bank may provide insurance or reinsurance of loans or portions thereof, or their debt service, including amounts payable as premiums of penalties in the event of mandatory or optional prepayment, made to finance a project, and to provide insurance or reinsurance or reserves, or portions thereof, or the yield therefrom, established to secure bonds issued to fund those loans or reserves.

(b) The bank may enter into or arrange agreements for insurance or reinsurance with users, mortgagors, lending institutions, insurers, and others, the bank being authorized to reinsure or cede risks to the insurers in any amounts as the bank may determine and the insurers, if otherwise authorized to reinsure or insure those risks in California, being hereby authorized to reinsure the bank or cede risks to the bank to the same extent as if the bank were a company authorized to reinsure or insure those risks.

(c) The bank may fix a rate or rates of premium for insurance or reinsurance, which need not be uniform, and may reflect any risks and classifications of risk as the bank determines to be reasonable.

(d) The bank may exercise those other powers as are necessary or incidental to insurance, reinsurance, and related matters.

(e) The bank shall make reasonable provisions for the security of loans made by the bank, and any insurance, reinsurance, and other financing arrangements negotiated by the bank.

(f) The insurance or reinsurance provided for by the bank shall not constitute a debt or pledge of the faith and credit of the state or any subdivision of the state.

SEC. 9. Section 63028 is added to the Government Code, to read:

63028. The bank assumes and shall observe, keep, and perform all of the responsibilities, liabilities, and obligations of the former California Economic Development Financing Authority established under Part 10.2 (commencing with Section 15710) of Division 2 of Title 2, as it read prior to the effective date of this section, and the assumption of the responsibilities, liabilities, and obligations of the former California Economic Development Financing Authority shall occur without any execution or filing of any paper or any further act. Any reference in any law, contract, bond, indenture, or other document to the former California Economic Development Financing Authority shall be deemed, hereafter, to mean the bank.

SEC. 10. Article 3 (commencing with Section 63040) of Chapter 2 of Division 1 of Title 6.7 of the Government Code is repealed.

SEC. 11. Section 63040 is added to the Government Code, to read:

63040. (a) Following consultation with appropriate state and local agencies, the bank shall establish criteria, priorities, and guidelines for the selection of projects to receive assistance from the bank. Projects shall comply with the criteria, priorities, and guidelines adopted by the bank.

(b) The criteria, priorities, and guidelines shall, at a minimum, be based upon the following:

(1) The State Environmental Goals and Policy Report, or its successor, approved pursuant to Article 5 (commencing with Section 65041) of Chapter 1.5 of Division 1 of Title 7.

(2) If the sponsor is a state agency, board, commission, or department, the Capital and Infrastructure Project Planning Report, prepared by the Director of Finance pursuant to Article 2 (commencing with Section 13100) of Chapter 2 of Part 3 of Division 3 of Title 2.

(c) The resolution required in Section 63041 shall have been adopted prior to the project's selection by the bank.

SEC. 12. The heading of Article 4 (commencing with Section 63042) of Chapter 2 of Division 1 of Title 6.7 of the Government Code is amended and renumbered to read:

Article 3. Local Resolution Applying for Bank Financing

SEC. 13. Section 63042 of the Government Code is amended and renumbered to read:

63041. (a) Prior to submitting a project to the bank for consideration, the legislative body or bodies of the sponsor or sponsors of the project shall find, by resolution, each of the following:

(1) The project is consistent with the general plan of both the city and county, or city and county in the case of San Francisco, or only the county for projects in unincorporated areas, in which the project is located.

(2) The proposed financing is appropriate for the specific project.

(3) The project facilitates effective and efficient use of existing and future public resources so as to promote both economic development and conservation of natural resources. The project develops and enhances public infrastructure in a manner that will attract, create, and sustain long-term employment opportunities.

(b) Upon the adoption of the resolution in subdivision (a) by the legislative body, the legislative body shall transmit the resolution to the executive director of the infrastructure bank.

SEC. 14. Article 5 (commencing with Section 63043) of Chapter 2 of Division 1 of Title 6.7 of the Government Code is repealed.

SEC. 15. Article 5 (commencing with Section 63043) is added to Chapter 2 of Division 1 of Title 6.7 of the Government Code, to read:

Article 5. Financing Public Development Facilities

63043. Notwithstanding any other provision of this division, Article 3 (commencing with Section 63040) and Article 4 (commencing with Section 63042), shall not apply to any conduit financing for economic development facilities by the bank directly for the benefit of a participating party.

63044. The bank shall consider a project for conduit financing for economic development facilities upon filing of an application with the bank by an appropriate participating party, on the terms and conditions the bank shall determine. The bank shall establish procedures for the expeditious review of applications for the issuance or approval of bonds to finance economic development facilities.

63045. In order to provide or arrange for the financing of economic development facilities, the bank may:

(a) Issue taxable revenue bonds pursuant to Chapter 5 (commencing with Section 63070) to provide financing for economic development projects compatible with the public interest as specified in Section 63046.

(b) Issue taxable revenue bonds pursuant to Chapter 5 (commencing with Section 63070) to provide financing for the revolving loan funds and economic development projects of small business development corporations, local economic development

corporations, community development corporations, and nonprofit organizations, which revolving loan funds and economic development projects shall be compatible with the public interest.

(c) Issue tax-exempt revenue bonds pursuant to Chapter 5 (commencing with Section 63070) to provide financing for economic development facilities as permitted by federal law and in accordance with applicable California law relating to the distribution of state allocations for private activity bonds. Projects so financed shall be compatible with the public interest as specified in Section 63046.

(d) Issue tax-exempt revenue bonds pursuant to Chapter 5 (commencing with Section 63070) for economic development facilities of public sector and nonprofit organizations qualifying for exemption under federal law.

63046. No financing shall be made by the bank under this article unless the bank shall have first determined that the financing or assistance meets the following public interest criteria:

(a) The financing, loan, grant, or other assistance is for a project or a use in the State of California.

(b) Those seeking funds or other assistance are capable of meeting obligations incurred under relevant agreements.

(c) In the case of loans or bonds, payments to be made under applicable financing documents are adequate to pay the current expenses of the bank in connection with the financing and to make payments on the bonds.

(d) The proposed financing is appropriate for the specific project.

63047. (a) Any loan entered into pursuant to this article may contain provisions for payment of a penalty if any recipient of funds under this article leaves this state prior to the completion of the full term of the loan.

(b) Projects that the board determines will produce long-term employment creation or retention shall receive first priority for financing.

(c) Any recipient of funds under this article that utilizes the funds for construction purposes, shall certify that the contractors are properly licensed by the Contractors' State License Board.

(d) The bank shall require that the proposed economic development facilities be consistent with any existing local or regional comprehensive plan.

(e) The bank shall develop a policy regarding financing companies that move within this state so as to minimize any displacement of jobs.

(f) In addition to any other methods the bank may use to identify economic development projects, the bank shall utilize existing local economic development networks to identify these projects and prepare a plan, in consultation with local economic development networks and their organizations and representatives, to implement this policy.

SEC. 16. The heading of Article 6 (commencing with Section 63048) of Chapter 2 of Division 1 of Title 6.7 of the Government Code is amended and renumbered to read:

Article 4. Financing of Transition Costs

SEC. 17. Section 63048 of the Government Code is amended and renumbered to read:

63042. Notwithstanding any other provision of this division, a project for the financing of transition costs and the acquisition of transition property upon the request of an electrical corporation shall be deemed to be in the public interest and eligible for financing by the bank, and Article 3 (commencing with Section 63040) and Article 5 (commencing with Section 63043) shall not apply to the project or financing. The bank shall consider a project for financing transition costs and the acquisition of transition property upon filing of an application by an appropriate participating party, on the terms and conditions the bank shall determine. The bank shall establish procedures for the expeditious review of applications from electrical corporations for the issuance or approval of rate reduction bonds. The review may be concurrent with the Public Utilities Commission's processing of an application for the pertinent financing order, so as to allow for the issuance of rate reduction bonds as quickly as feasible after the issuance of the pertinent financing order by the Public Utilities Commission. Notwithstanding any other provision of this division, the bank shall have no authority to alter or modify any term or condition related to the transition costs or the transition property as set forth in the pertinent financing order, and shall have no authority over any matter that is subject to the approval of the Public Utilities Commission under Article 5.5 (commencing with Section 840) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code.

SEC. 18. The heading of Article 1 (commencing with Section 63050) of Chapter 3 of Division 1 of Title 6.7 of the Government Code is repealed.

SEC. 19. Section 63055 of the Government Code is amended to read:

63055. (a) Moneys in the infrastructure bank fund received from the proceeds of bonds issued pursuant to this division may not be transferred to any other fund except as necessary to pay the expenses of operating the program authorized by this division, nor shall the bank utilize any moneys under the direction and control of the California Housing Finance Agency, including, but not limited to, moneys in the California Housing Loan Insurance Fund and the Housing Finance Fund, other than moneys in the infrastructure bank fund to satisfy liabilities arising from projects authorized by this division.

(b) The infrastructure bank fund, on behalf of the bank, may borrow or receive moneys from the bank or from any federal, state, or local agency or private entity, in order to create reserves in the infrastructure bank fund as provided in this division and as authorized by resolution of the board.

SEC. 20. Section 63071 of the Government Code is amended to read:

63071. (a) Notwithstanding any other provision of law, but consistent with Sections 1 and 18 of Article XVI of the California Constitution, a sponsor may issue bonds for purchase by the bank pursuant to a bond purchase agreement. The bank may issue bonds or authorize a special purpose trust to issue bonds. These bonds may be issued pursuant to the charter of any city or any city and county that authorized the issuance of these bonds as a sponsor and may also be issued by any sponsor pursuant to the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) of Division 2 of Title 5) to pay the costs and expenses pursuant to this title, subject to the following conditions:

(1) With the prior approval of the bank, the sponsor may sell these bonds in any manner as it may determine, either by private sale or by means of competitive bid.

(2) Notwithstanding Section 54418, the bonds may be sold at a discount at any rate as the bank and sponsor shall determine.

(3) Notwithstanding Section 54402, the bonds shall bear interest at any rate and be payable at any time as the sponsor shall determine with the consent of the bank.

(b) The total amount of bonds that may be outstanding at any one time under this chapter shall not exceed five billion dollars ($5,000,000,000), exclusive of rate reduction bonds and bonds issued by the bank pursuant to Article 5 (commencing with Section 63043) of Chapter 2 to finance economic development facilities. The total amount of rate reduction bonds that may be outstanding at any one time under this chapter shall not exceed ten billion dollars ($10,000,000,000).

(c) Bonds for which moneys or securities have been deposited in trust, in amounts necessary to pay or redeem the principal, interest, and any redemption premium thereon, shall be deemed not to be outstanding for purposes of this section.

SEC. 21. Section 63084 is added to the Government Code, to read:

63084. (a) Any issue of revenue bonds by the bank may be secured and made more attractive to capital markets through financial instruments, including, but not limited to:

(1) Deeds of trust on the resources, facilities, and revenues of the projects.

(2) Credit enhancements, including, but not limited to, letters of credit, bond insurance, and surety bonds provided by private financial institutions.

(3) Insurance and guarantees provided by the bank itself.

(b) The bank may make loans to help establish and support the revolving loan funds of small business development corporations, economic development corporations, community development corporations, and nonprofit corporations. The loans may be made from any appropriate account or subaccount of the California Infrastructure and Economic Development Bank Fund and as determined by the bank.

SEC. 22. Section 63085 is added to the Government Code, to read:

63085. Whenever the bank deems that it will increase the salability or the price of the bonds to obtain, prior to or after sale, a legal opinion from private counsel as to the validity or tax-exempt nature of the bonds, the bank may obtain a legal opinion. Payment for legal services may be made out of the proceeds of the sale of the bonds.

SEC. 23. Section 63086 is added to the Government Code, to read:

63086. The bank 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 bank. Payment for these services may be made out of the proceeds of the sale of the bonds.

SEC. 24. Section 63087 is added to the Government Code, to read:

63087. Section 10295 and Sections 10335 to 10382, inclusive, of the Public Contract Code shall not apply to agreements entered into by the bank in connection with the sale of bonds or notes authorized under this division.

CHAPTER 5

An act relating to victims of crime, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor March 2, 1998. Filed with Secretary of State March 2, 1998.]

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

SECTION 1. The Director of Finance shall, not later than April 1, 1998, authorize and direct the Controller to repay in full, with interest, the loan made from the Restitution Fund pursuant to Item 8700-005-0214 of Section 2.00 of the Budget Act of 1997. The rate of interest on the loan shall be equal to the average rate earned by the Pooled Money Investment Account over the period during which the loan was outstanding.

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

To restore public confidence in the integrity of the Restitution Fund and to make available funding that may be used to assist victims of crime as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 6

An act to add Chapter 3 (commencing with Section 10000) to Part 1 of Division 3 of the Unemployment Insurance Code, and to amend Section 10531 of the Welfare and Institutions Code, relating to employment services, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor March 3, 1998. Filed with Secretary of State March 4, 1998.]

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

SECTION 1. Chapter 3 (commencing with Section 10000) is added to Part 1 of Division 3 of the Unemployment Insurance Code, to read:

CHAPTER 3. WELFARE-TO-WORK GRANT PROGRAM

10000. It is the intent of the Legislature, in enacting this chapter, to implement federal welfare-to-work grant program provisions provided for pursuant to the federal Balanced Budget Act of 1997 (Public Law 105-33).

10001. There is hereby appropriated from moneys in the Federal Trust Fund received from the United States Department of Labor pursuant to the federal welfare-to-work grant program, to the department the sum of one hundred sixty-one million eight hundred fifty-five thousand dollars ($161,855,000), for the 1997–98 fiscal year, in order to implement the federal welfare-to-work program. Moneys appropriated pursuant to this section shall be allocated by the department in accordance with this chapter and Public Law 105-33. The funds appropriated pursuant to this section shall be used to supplement and support activities to transition individuals eligible under the federal welfare-to-work program into self-sufficiency.

10002. To the extent permitted by federal law, the department shall do all of the following in implementing this chapter:

(a) Certify that each local welfare-to-work plan has been approved, as evidenced by signatures of the chairperson of the private industry council or the alternate local administrative entity designated by the Governor to administer the local welfare-to-work program, and the chief local elected official of the affected

jurisdiction, and by approval by the county board of supervisors at a public meeting.

(b) Certify that the plan demonstrates evidence of collaboration between local work force and development partners and local economic development organizations.

(c) Allow multiple private industry councils or the alternate administrative entities designated by the Governor, within a single county, to combine their welfare-to-work grant program plans into a single, countywide welfare-to-work grant program plan that is signed by all affected private industry councils or alternate local administrative entities and the chief local elected officials in the affected jurisdictions, and that includes an approval by the county board of supervisors at a public meeting. The combined welfare-to-work plan shall describe the overall approach to be taken in the county, the coordination efforts that have been made in developing the plan, any uniform agreements reached with the county welfare department, regarding referral and case management, and any common definitions that will be used by all private industry councils or alternate local administrative entities. All other requirements contained in the local welfare-to-work grant plan instructions shall be clearly delineated for each private industry council or alternate local administrative entity, including identification of the responsible entity's target population to be served, the activities that will be offered, performance goals, and expenditure and participant planning information.

(d) Certify that the private industry council or the alternate local administrative entity designated by the Governor, and the county welfare department, through a local joint planning process, have developed protocols for the identification and referral of clients and the provision of welfare-to-work services, as a condition for the receipt of those federal funds.

(e) Develop procedures to recapture unused funds and redistribute them to private industry councils or alternate local administrative entities designated by the Governor, which demonstrate a continued need for additional funds.

(f) Certify that the plan documents collaboration with the local lead agency responsible for coordination with the welfare-to-work job creation task force, established pursuant to paragraph (1) of subdivision (g) of Section 15365.55 of the Government Code.

10003. (a) Subject to subdivision (d), the department shall distribute 85 percent of the federal welfare-to-work grant funds to private industry councils or alternate local administrative entities designated by the Governor, according to the variables defined in the federal welfare-to-work program, and consistent with the following formula:

(1) A weight of 55 percent shall be given based on the relative number, as determined pursuant to federal law, by which the

population in the area below the poverty line exceeds 7.5 percent of the total population.

(2) A weight of 30 percent shall be based upon the relative number of adults residing in the plan's service area who are receiving assistance under a state program funded in part through the federal Temporary Assistance for Needy Families grant program or the federal Aid to Families with Dependent Children Program for at least 30 months.

(3) A weight of 15 percent shall be based upon the relative number, as determined pursuant to federal law, of unemployed individuals residing in the plan's service area.

(b) Changes in the allocation formula established pursuant to subdivision (a) that may be needed for subsequent fiscal years may be implemented by the department only after public hearings have been conducted regarding the proposed changes. Any change in that allocation formula may be implemented not sooner than 30 days after notification in writing to the chairperson of the committee in each house of the Legislature that considers appropriations, the chairpersons of the appropriate committees and subcommittees in each house of the Legislature that considers the State Budget, and the Chairperson of the Joint Legislative Budget Committee, or not sooner than whatever lesser time the Chairperson of the Joint Legislative Budget Committee or his or her designee, may in each instance determine.

(c) Subject to subdivision (d), the department, at the direction of the Governor, shall distribute the remaining 15 percent of federal welfare-to-work grant funds, less the amount necessary to administer the program, to state and local projects that will assist in moving eligible participants into unsubsidized employment. The Governor shall take into special consideration the needs of rural areas in distributing funds under this subdivision. Funds allocated pursuant to this subdivision shall be distributed to employers, private nonprofit organizations, and for-profit and public entities. Payments of these funds shall be contingent upon performance outcomes. Proposals submitted for state and local projects shall include, at a minimum, comments by the local private industry council or alternate local administrative entity, and the county welfare department, to ensure that grants that are approved will be consistent with local plans for moving eligible participants into unsubsidized employment.

(d) Not more than 15 percent of federal welfare-to-work funds may be retained by the department for the cost of state administration of the welfare-to-work program.

10004. (a) On April 1, 1999, and on April 1 of each year thereafter, the department shall submit an annual report to the Legislature on the effectiveness of the program provided for under this chapter and the status of the federal welfare-to-work grant program funds allotted to this state.

(b) The report shall include information from the prior year, as compiled by, each service delivery area, on all of the following:

(1) The number of participants receiving services by federal target groups.

(2) The types of interventions and services provided.

(3) The employment outcomes achieved.

(4) The kinds of service providers receiving welfare-to-work grant funds.

(5) The amount of welfare-to-work grant funds received and expended.

(6) Any other data required to be reported to the United States Department of Labor regarding this program.

(c) The report shall also include information on the status of projects funded pursuant to subdivision (c) of Section 10003, and the outcomes associated with those projects.

10005. The unit of general local government or each unit of general local government that is a member of a consortium described in Section 15025, and which shall be represented by the chief local elected official described in subsection (c) of Section 103 of the federal Job Training Partnership Act (29 U.S.C. Sec. 1513(c)), shall be liable to the department for all federal welfare-to-work funds distributed pursuant to Section 10003 that are not expended in accordance with this chapter and federal welfare-to-work grant program provisions.

SEC. 2. Section 10531 of the Welfare and Institutions Code is amended to read:

10531. Each county shall develop a plan consistent with state law that describes how the county intends to deliver the full range of activities and services necessary to move CalWORKs recipients from welfare to work. The plan shall be updated as needed. The plan shall describe:

(a) How the county will collaborate with other public and private agencies to provide for all necessary training, and support services.

(b) The county's partnerships with the private sector, including employers and employer associations, and how those partnerships will identify jobs for CalWORKs program recipients.

(c) Other means the county will use to identify local labor market needs.

(d) The range of welfare-to-work activities the county will offer recipients and the identification of any allowable activities that will not be offered.

(e) The process the county will use to provide for the availability of substance abuse and mental health treatment services.

(f) The extent to which, and the manner in which, mental health services will be available to recipients after the period specified in subdivision (a) of Section 11454.

(g) The process the county will use to provide for child care and transportation services.

(h) The county's community service plan.

(i) How the county will provide training of county workers responsible for working with CalWORKs recipients who are victims of domestic violence.

(j) The performance outcomes identified during the local planning process that the county or other local agencies will track in order to measure the extent to which the county's program meets locally established objectives.

(k) The means the county used to provide broad public input to the development of the county's plan.

(*l*) A budget that specifies the source and expenditures of funds for the program.

(m) How the county will assist families that are transitioning off aid.

(n) All necessary components of the job creation plan required by Section 15365.55 of the Government Code in counties that choose to implement the program described in Chapter 1.12 (commencing with Section 15365.50) of Part 6.7 of Division 3 of Title 2 of the Government Code.

(o) Other elements identified by the director, in consultation with the steering committee under Section 10544.5, including elements related to the performance outcomes listed in Sections 10540 and 10541.

(p) How the county will comply with federal requirements of the Temporary Assistance for Needy Families program (Part A (commencing with Section 601) of Subchapter 4 of Chapter 7 of Title 42 of the United States Code).

(q) How the county will coordinate welfare-to-work activities with the local private industry councils or alternate administrative entities designated by the Governor to administer local welfare-to-work programs, including the expenditure of state or other matching funds provided to the county welfare department for welfare-to-work activities. No later than September 1, 1998, and each year thereafter, subject to continued welfare-to-work funding, each county shall submit an addendum to its plan required under this section that describes its coordination efforts.

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, 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 apply welfare-to-work grant program provisions during the 1997–98 fiscal year, it is necessary that this act go into immediate effect.

CHAPTER 7

An act to amend Sections 17039, 17053.47, 17062, 17276.2, 18510, 19023, 19024, 19025, 19136.3, 19147, 19149, 19184, 19280, 23036, 23456, 23622.8, 23802, 24416.2, and 24918 of, to add Sections 17088.5, 17088.6, 17132.6, 17207.4, 17559, 17760.5, 18036.5, 18037.3, 18038.5, 18155.5, 18572, 19109, 24347.4, 24652.5, 24661.5, 24871.5, 24872.4, 24872.5, 24872.7, 24875.5, and 24949.1 to, to repeal Sections 17731.5, 19365, 23813, and 24954 of, and to repeal and amend Section 23800.5 of, the Revenue and Taxation Code, to amend Sections 110 and 112 of Chapter 605 of the Statutes of 1997, to amend Section 30 of Chapter 611 of the Statutes of 1997, and to add Section 19 to Chapter 609 of the Statutes of 1997, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor March 13, 1998. Filed with Secretary of State March 14, 1998.]

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 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 former 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 former 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 former Section 17053.11 (relating to program area hiring credit).

(K) For each taxable year beginning on or after January 1, 1994, the credit allowed by Section 17053.17 (relating to Los Angeles Revitalization Zone hiring credit).

(L) The credit allowed by Section 17053.33 (relating to targeted tax area sales or use tax credit).

(M) The credit allowed by Section 17053.34 (relating to targeted tax area hiring credit).

(N) The credit allowed by Section 17053.49 (relating to qualified property).

(O) The credit allowed by Section 17053.70 (relating to enterprise zone sales or use tax credit).

(P) The credit allowed by Section 17053.74 (relating to enterprise zone hiring credit).

(Q) The credit allowed by Section 17057 (relating to clinical testing expenses).

(R) The credit allowed by Section 17058 (relating to low-income housing).

(S) The credit allowed by Section 17061 (relating to refunds pursuant to the Unemployment Insurance Code).

(T) Credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(U) The credit allowed by Section 19002 (relating to tax withholding).

(2) Any credit that 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 that has been repealed or made inoperative shall continue to be allowed to be carried over under the provisions of that section as it read immediately prior to being repealed or becoming inoperative.

(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 shall be allocated 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) Unless otherwise provided, in the case of a partnership, any credit allowed by this part shall be computed at the partnership level, and any limitation on the expenses qualifying for the credit or limitation upon the amount of the credit shall be applied to the partnership and to each partner.

(g) (1) With respect to any taxpayer that directly or indirectly owns an interest in a business entity that is disregarded for tax purposes pursuant to Section 23038 and any regulations thereunder, the amount of any credit or credit carryforward allowable for any taxable year attributable to the disregarded business entity shall be limited in accordance with paragraphs (2) and (3).

(2) The amount of any credit otherwise allowed under this part, including any credit carryover from prior years, that may be applied

to reduce the taxpayer's "net tax," as defined in subdivision (a), for the taxable year shall be limited to an amount equal to the excess of the taxpayer's regular tax (as defined in Section 17062), determined by including income attributable to the disregarded business entity that generated the credit or credit carryover, over the taxpayer's regular tax (as defined in Section 17062), determined by excluding the income attributable to that disregarded business entity. No credit shall be allowed if the taxpayer's regular tax (as defined in Section 17062), determined by including the income attributable to the disregarded business entity, is less than the taxpayer's regular tax (as defined in Section 17062), determined by excluding the income attributable to the disregarded business entity.

(3) If the amount of a credit allowed pursuant to the section establishing the credit exceeds the amount allowable under this subdivision in any taxable year, the excess amount may be carried over to subsequent taxable years pursuant to subdivisions (c) and (d).

SEC. 1.5. Section 17053.47 of the Revenue and Taxation Code is amended to read:

17053.47. (a) For each taxable year beginning on or after January 1, 1998, there shall be allowed a credit against the "net tax" (as defined in Section 17039) to a qualified taxpayer for hiring a qualified disadvantaged individual during the taxable year for employment in the Manufacturing Enhancement Area. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of the qualified wages in the first year of employment.

(2) Forty percent of the qualified wages in the second year of employment.

(3) Thirty percent of the qualified wages in the third year of employment.

(4) Twenty percent of the qualified wages in the fourth year of employment.

(5) Ten percent of the qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means:

(A) That portion of wages paid or incurred by the qualified taxpayer during the taxable year to qualified disadvantaged individuals that does not exceed 150 percent of the minimum wage.

(B) The total amount of qualified wages which may be taken into account for purposes of claiming the credit allowed under this section shall not exceed two million dollars ($2,000,000) per taxable year.

(C) Wages received during the 60-month period beginning with the day the qualified disadvantaged individual commences employment with the qualified taxpayer.

(D) Qualified wages do not include any wages paid or incurred by the qualified taxpayer on or after the Manufacturing Enhancement

Area expiration date. However, wages paid or incurred with respect to qualified employees who are employed by the qualified taxpayer within the Manufacturing Enhancement Area within the 60-month period prior to the Manufacturing Enhancement Area expiration date shall continue to qualify for the credit under this section after the Manufacturing Enhancement Area expiration date, in accordance with all provisions of this section applied as if the Manufacturing Enhancement Area designation were still in existence and binding.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) "Manufacturing Enhancement Area" means an area designated pursuant to Section 7073.8 of the Government Code according to the procedures of Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(4) "Manufacturing Enhancement Area expiration date" means the date the Manufacturing Enhancement Area designation expires, is no longer binding, or becomes inoperative.

(5) "Qualified disadvantaged individual" means an individual who satisfies all of the following requirements:

(A) (i) At least 90 percent of whose services for the qualified taxpayer during the taxable year are directly related to the conduct of the qualified taxpayer's trade or business located in a Manufacturing Enhancement Area.

(ii) Who performs at least 50 percent of his or her services for the qualified taxpayer during the taxable year in the Manufacturing Enhancement Area.

(B) Who is hired by the qualified taxpayer after the designation of the area as a Manufacturing Enhancement Area in which the individual's services were primarily performed.

(C) Who is any of the following immediately preceding the individual's commencement of employment with the qualified taxpayer:

(i) An individual who has been determined eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.).

(ii) Any voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 as provided pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(iii) Any individual who has been certified eligible by the Employment Development Department under the federal Targeted Jobs Tax Credit Program, whether or not this program is in effect.

(6) "Qualified taxpayer" means any taxpayer engaged in a trade or business within a Manufacturing Enhancement Area designated

pursuant to Section 7073.8 of the Government Code and who meets both of the following requirements:

(A) Is engaged in those lines of business described in Codes 2011 to 3999, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(B) At least 50 percent of the qualified taxpayer's work force hired after the designation of the Manufacturing Enhancement Area is composed of individuals who, at the time of hire, are residents of the county in which the Manufacturing Enhancement Area is located.

(C) Of this percentage of local hires, at least 30 percent shall be qualified disadvantaged individuals.

(c) (1) For purposes of this section, all of the following apply:

(A) All employees of trades or businesses that are under common control shall be treated as employed by a single qualified taxpayer.

(B) The credit (if any) allowable by this section with respect to each trade or business shall be determined by reference to its proportionate share of the expense of the qualified wages giving rise to the credit and shall be allocated in that manner.

(C) Principles that apply in the case of controlled groups of corporations, as specified in subdivision (d) of Section 23622.7, shall apply with respect to determining employment.

(2) If a qualified taxpayer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (d)) for any calendar year ending after that acquisition, the employment relationship between a qualified disadvantaged individual and a qualified taxpayer shall not be treated as terminated if the qualified disadvantaged individual continues to be employed in that trade or business.

(d) (1) If the employment of any qualified disadvantaged individual, with respect to whom qualified wages are taken into account under subdivision (b) is terminated by the qualified taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that qualified disadvantaged individual completes 90 days of employment with the qualified taxpayer, the tax imposed by this part for the taxable year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that qualified disadvantaged individual.

(2) (A) Paragraph (1) does not apply to any of the following:

(i) A termination of employment of a qualified disadvantaged individual who voluntarily leaves the employment of the qualified taxpayer.

(ii) A termination of employment of a qualified disadvantaged individual who, before the close of the period referred to in paragraph (1), becomes disabled to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of a qualified disadvantaged individual, if it is determined under the applicable employment compensation laws that the termination was due to the misconduct of that individual.

(iv) A termination of employment of a qualified disadvantaged individual due to a substantial reduction in the trade or business operations of the qualified taxpayer.

(v) A termination of employment of a qualified disadvantaged individual, if that individual is replaced by other qualified disadvantaged individuals so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the qualified taxpayer and a qualified disadvantaged individual shall not be treated as terminated by reason of a mere change in the form of conducting the trade or business of the qualified taxpayer, if the qualified disadvantaged individual continues to be employed in that trade or business and the qualified taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(e) In the case of an estate or trust, both of the following apply:

(1) The qualified wages for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

(2) Any beneficiary to whom any qualified wages have been apportioned under paragraph (1) shall be treated (for purposes of this part) as the employer with respect to those wages.

(f) The credit shall be reduced by the credit allowed under Section 17053.7. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the qualified taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (g) or (h).

(g) In the case where the credit otherwise allowed under this section exceeds the "net tax" for the taxable year, that portion of the credit that exceeds the "net tax" may be carried over and added to the credit, if any, in succeeding years, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(h) (1) The amount of credit otherwise allowed under this section, including prior year credit carryovers, that may reduce the

"net tax" for the taxable year shall not exceed the amount of tax that would be imposed on the qualified taxpayer's business income attributed to a Manufacturing Enhancement Area determined as if that attributed income represented all of the net income of the qualified taxpayer subject to tax under this part.

(2) The amount of attributed income described in paragraph (1) shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11, modified for purposes of this section as follows:

(A) Income shall be apportioned to a Manufacturing Enhancement Area by multiplying total business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) "The Manufacturing Enhancement Area" shall be substituted for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding taxable years, as if it were an amount exceeding the "net tax" for the taxable year, as provided in subdivision (g).

(i) If the taxpayer is allowed a credit pursuant to this section for qualified wages paid or incurred, only one credit shall be allowed to the taxpayer under this part with respect to any wage consisting in whole or in part of those qualified wages.

SEC. 2. 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).

(4) The provisions of Section 55(b)(2) of the Internal Revenue Code, relating to alternative minimum taxable income, shall be modified to provide that alternative minimum taxable income shall not include the income, adjustments, and items of tax preference attributable to any trade or business of a qualified taxpayer.

(A) For purposes of this paragraph, "qualified taxpayer" means a taxpayer who meets both of the following:

(i) Is the owner of, or has an ownership interest in, a trade or business.

(ii) Has aggregate gross receipts, less returns and allowances, of less than one million dollars ($1,000,000) during the taxable year from all trades or businesses of which the taxpayer is the owner or has an ownership interest, in the amount of that taxpayer's proportionate interest in each trade or business.

(B) For purposes of this paragraph, "aggregate gross receipts, less returns and allowances" means the sum of the gross receipts of the trades or businesses which the taxpayer owns and the proportionate interest of the gross receipts of the trades or businesses which the taxpayer owns and of passthrough entities in which the taxpayer holds an interest.

(C) For purposes of this paragraph, "gross receipts, less returns and allowances" means the sum of the gross receipts from the production of business income, as defined in subdivision (a) of Section 25120, and the gross receipts from the production of nonbusiness income, as defined in subdivision (d) of Section 25120.

(D) For purposes of this paragraph, "proportionate interest" means:

(i) In the case of a passthrough entity which reports a profit for the taxable or income year, the taxpayer's profit interest in the entity at the end of the taxpayer's taxable year.

(ii) In the case of a passthrough entity which reports a loss for the taxable or income year, the taxpayer's loss interest in the entity at the end of the taxpayer's taxable year.

(iii) In the case of a passthrough entity which is sold or liquidates during the taxable or income year, the taxpayer's capital account interest in the entity at the time of the sale or liquidation.

(E) (i) For purposes of this paragraph, "proportionate interest" includes an interest in a passthrough entity.

(ii) For purposes of this paragraph, "passthrough entity" means any of the following:

(I) A partnership, as defined by Section 17008.

(II) An S corporation, as provided in Chapter 4.5 (commencing with Section 23800) of Part 11.

(III) A regulated investment company, as provided in Section 24871.

(IV) A real estate investment trust, as provided in Section 24872.

(V) A real estate mortgage investment conduit, as provided in Section 24874.

(5) For taxable years beginning on or after January 1, 1998, Section 55(d)(1) of the Internal Revenue Code, relating to exemption amount for taxpayers other than corporations is modified, for purposes of this part, to provide the following exemption amounts in lieu of those contained therein:

(A) Fifty-seven thousand two hundred sixty dollars ($57,260) in the case of either of the following:

(i) A joint return.

(ii) A surviving spouse.

(B) Forty-two thousand nine hundred forty-five dollars ($42,945) in the case of an individual who is both of the following:

(i) Not a married individual.

(ii) Not a surviving spouse.

(C) Twenty-eight thousand six hundred thirty dollars ($28,630) in the case of either of the following:

(i) A married individual who files a separate return.

(ii) An estate or trust.

(6) For taxable years beginning on or after January 1, 1998, Section 55(d)(3) of the Internal Revenue Code, relating to the phaseout of exemption amount for taxpayers other than corporations is modified, for purposes of this part, to provide the following phaseout of exemption amounts in lieu of those contained therein:

(A) Two hundred fourteen thousand seven hundred twenty-five dollars ($214,725) in the case of a taxpayer described in subparagraph (A) of paragraph (5).

(B) One hundred sixty-one thousand forty-four dollars ($161,044) in the case of a taxpayer described in subparagraph (B) of paragraph (5).

(C) One hundred seven thousand three hundred sixty-two dollars ($107,362) in the case of a taxpayer described in subparagraph (C) of paragraph (5).

(7) For each taxable year beginning on or after January 1, 1999, the Franchise Tax Board shall recompute the exemption amounts prescribed in paragraph (5) and the phaseout of exemption amounts prescribed in paragraph (6). Those computations shall be made as follows:

(A) 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.

(B) The Franchise Tax Board shall do both of the following:

(i) Compute an inflation adjustment factor by adding 100 percent to the percentage change figure that is furnished pursuant to subparagraph (A) and dividing the result by 100.

(ii) Multiply the preceding taxable year exemption amounts and the phaseout of exemption amounts by the inflation adjustment factor determined in clause (i) and round off the resulting products to the nearest one dollar ($1).

(c) (1) Section 56(a)(6) of the Internal Revenue Code, relating to installment sales of certain property, shall not apply to dispositions in taxable years beginning on or after January 1, 1997, with respect to dispositions occurring in taxable years beginning after December 31, 1987.

(2) 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.

(3) Section 56(b)(3) of the Internal Revenue Code, relating to treatment of incentive stock options, shall be modified to additionally provide the following:

(A) Section 421 of the Internal Revenue Code shall not apply to the transfer of stock acquired pursuant to the exercise of a California qualified stock option under Section 17502.

(B) Section 422(c)(2) of the Internal Revenue Code shall apply in any case where the disposition and inclusion of a California qualified stock option for purposes of this chapter are within the same taxable year and that section shall not apply in any other case.

(C) The adjusted basis of any stock acquired by the exercise of a California qualified stock option shall be determined on the basis of the treatment prescribed by this paragraph.

(d) The provisions of Section 57(a)(5) of the Internal Revenue Code, relating to tax-exempt interest shall not apply.

(e) (1) Section 57(a) of the Internal Revenue Code, relating to items of tax preference, is modified to include as an item of tax preference the amount by which the deduction allowable under Section 170 of the Internal Revenue Code, relating to charitable contributions or gifts, or Section 642(c) of the Internal Revenue Code, relating to deduction for amounts paid or permanently set aside for a charitable purpose, would be reduced if all capital gain property were taken into account at its adjusted basis.

(2) For purposes of paragraph (1), the term "capital gain property" has the meaning given to that term by Section 170(b)(1)(C)(iv) of the Internal Revenue Code. That term shall not include any property to which an election under Section 170(b)(1)(C)(iii) of the Internal Revenue Code applies.

(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. 3. Section 17088.5 is added to the Revenue and Taxation Code, to read:

17088.5. (a) Section 851(b)(3) of the Internal Revenue Code shall not apply.

(b) This section shall apply in determining whether an entity qualifies as a regulated investment company for income years of that entity beginning after August 5, 1997.

SEC. 4. Section 17088.6 is added to the Revenue and Taxation Code, to read:

17088.6. (a) Section 856(c)(4) of the Internal Revenue Code shall not apply.

(b) (1) Section 856(c)(6)(G) of the Internal Revenue Code shall not apply and in lieu thereof paragraph (2) shall apply.

(2) Except to the extent provided by regulations of the Secretary of the Treasury under Section 856(c)(5)(G) of the Internal Revenue Code (as redesignated and amended by Public Law 105-34), both of the following shall be treated as income qualifying under Section 856(c)(2) of the Internal Revenue Code:

(A) Any payment to a real estate investment trust under an interest rate swap or cap agreement, option, futures contract, forward rate agreement, or any similar financial instrument, entered into by the trust in a transaction to reduce the interest rate risks with respect to any indebtedness incurred or to be incurred by the trust to acquire or carry real estate assets.

(B) Any gain from the sale or other disposition of any such investment.

(c) This section shall apply in determining whether an entity qualifies as a real estate investment trust for income years of that entity beginning after August 5, 1997.

SEC. 5. Section 17132.6 is added to the Revenue and Taxation Code, to read:

17132.6. (a) (1) Section 101 of the Internal Revenue Code, relating to certain death benefits, is modified to additionally provide that gross income shall not include any amount paid as a survivor annuity on account of the death of a public safety officer (as that term is defined in Section 1204 of the Omnibus Crime Control and Safe Streets Act of 1968) killed in the line of duty—

(A) If that annuity is provided, under a governmental plan which meets the requirements of Section 401(a) of the Internal Revenue Code, to the spouse (or former spouse) of the public safety officer or to a child of that officer.

(B) To the extent that annuity is attributable to the officer's service as a public safety officer.

(2) Paragraph (1) shall not apply with respect to the death of any public safety officer if, as determined in accordance with the Omnibus Crime Control and Safe Streets Act of 1968—

(A) The death was caused by the intentional misconduct of the officer or by the officer's intention to bring about the officer's death.

(B) The officer was voluntarily intoxicated (as defined in Section 1204 of the Omnibus Crime Control and Safe Streets Act of 1968) at the time of death.

(C) The officer was performing that officer's duties in a grossly negligent manner at the time of death.

(D) The payment is to an individual whose actions were a substantial contributing factor to the death of the officer.

(b) This section shall apply to amounts received in taxable years beginning after December 31, 1996, with respect to individuals dying after December 31, 1996.

SEC. 6. Section 17207.4 is added to the Revenue and Taxation Code, to read:

17207.4. (a) Section 165(i) of the Internal Revenue Code is modified to additionally provide that an appraisal for the purpose of obtaining a loan of federal funds or a loan guarantee from the federal government as a result of a presidentially declared disaster, as defined by Section 1033(h)(3) of the Internal Revenue Code, may be used to establish the amount of any loss described in Section 165(i)(1) or (2) of the Internal Revenue Code to the extent provided in regulations or other guidance of the Secretary of the Treasury under Section 165(i)(4) of the Internal Revenue Code, as added by Section 912 of Public Law 105-34.

(b) This section shall apply on and after August 5, 1997.

SEC. 7. Section 17276.2 of the Revenue and Taxation Code is amended to read:

17276.2. The term "qualified taxpayer" as used in Section 17276.1 means any of the following:

(a) A person or entity engaged in the conduct of a trade or business within an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(1) A net operating loss shall not be a net operating loss carryback to any taxable year and a net operating loss for any taxable year beginning on or after the date that the area in which the taxpayer conducts a trade or business is designated as an enterprise zone shall be a net operating loss carryover to each of the 15 taxable years following the taxable year of loss.

(2) For purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 17276.1, attributable to the taxpayer's business activities within the enterprise zone (as defined in Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code) prior to the enterprise zone expiration date. That attributable loss shall be determined in accordance with Chapter 17 (commencing with Section 25101) of Part 11, modified for purposes of this section by substituting "enterprise zone" for "this state."

(B) A net operating loss carryover shall be a deduction only with respect to the taxpayer's business income attributable to the enterprise zone (as defined in Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code) determined in accordance with Chapter 17 (commencing with Section 25101) of Part 11, modified for purposes of this section by substituting "enterprise zone" for "this state."

(C) If a loss carryover is allowable pursuant to this section for any taxable year after the enterprise zone designation has expired, the enterprise zone shall be deemed to remain in existence for purposes of computing the limitation set forth in subparagraph (B) and allowing a net operating loss deduction.

(D) "Enterprise zone expiration date" means the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(b) A person or entity engaged in the conduct of a trade or business within the Los Angeles Revitalization Zone designated pursuant to Section 7102 of the Government Code.

(1) A net operating loss shall not be a net operating loss carryback for any taxable year, and a net operating loss for any taxable year beginning on or after the date the area in which the taxpayer conducts a trade or business is designated the Los Angeles Revitalization Zone shall be a net operating loss carryover to each following taxable year that ends before the Los Angeles Revitalization Zone expiration date or to each of the 15 taxable years following the taxable year of loss, if longer.

(2) For the purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 17276.1, attributable to the taxpayer's business activities within the Los Angeles Revitalization Zone (as defined in Section 7102 of the Government Code) prior to the Los Angeles Revitalization Zone expiration date. The attributable loss shall be determined in accordance with Chapter 17 (commencing with Section 25101) of Part 11, modified as follows:

(i) Loss shall be apportioned to the Los Angeles Revitalization Zone by multiplying total loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The Los Angeles Revitalization Zone" shall be substituted for "this state."

(B) A net operating loss carryover shall be a deduction only with respect to the taxpayer's business income attributable to the Los Angeles Revitalization Zone (as defined in Section 7102 of the Government Code) determined in accordance with paragraph (3).

(C) If a loss carryover is allowable pursuant to this section for any taxable year after the Los Angeles Revitalization Zone designation has expired, the Los Angeles Revitalization Zone shall be deemed to remain in existence for purposes of computing the limitation set forth in subparagraph (B) and allowing a net operating loss deduction.

(3) Attributable income shall be that portion of the taxpayer's California source business income which is apportioned to the Los Angeles Revitalization Zone. For that purpose, the taxpayer's business income attributable to sources in this state first shall be determined in accordance with Chapter 17 (commencing with Section 25101) of Part 11. That business income shall be further apportioned to the Los Angeles Revitalization Zone in accordance with Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified as follows:

(A) Business income shall be apportioned to the Los Angeles Revitalization Zone by multiplying total California business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the Los Angeles Revitalization Zone during the taxable year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the taxable year.

(C) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the Los Angeles Revitalization Zone during the taxable year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the taxable year.

(4) "Los Angeles Revitalization Zone expiration date" means the date the Los Angeles Revitalization Zone designation expires, is repealed, or becomes inoperative pursuant to Section 7102, 7103, or 7104 of the Government Code.

(5) This subdivision shall be inoperative on the first day of the taxable year beginning on or after the determination date, and each taxable year thereafter, with respect to the taxpayer's business activities within a geographic area that is excluded from the map pursuant to Section 7102 of the Government Code, or an excluded area determined pursuant to Section 7104 of the Government Code. The determination date is the earlier of the first effective date of a determination under subdivision (c) of Section 7102 of the Government Code occurring after December 1, 1994, or the first effective date of an exclusion of an area from the amended Los Angeles Revitalization Zone under Section 7104 of the Government Code. However, if the taxpayer has any unused loss amount as of the date this section becomes inoperative, that unused loss amount may continue to be carried forward as provided in this subdivision.

(6) This subdivision shall cease to be operative on January 1, 1998. However, any unused net operating loss may continue to be carried over to following years as provided in this subdivision.

(c) For each taxable year beginning on or after January 1, 1995, and before January 1, 2003, a taxpayer engaged in the conduct of a trade or business within a LAMBRA.

(1) A net operating loss shall not be a net operating loss carryback for any taxable year, and a net operating loss for any taxable year beginning on or after the date the area in which the taxpayer conducts a trade or business is designated a LAMBRA shall be a net operating loss carryover to each following taxable year that ends before the LAMBRA expiration date or to each of the 15 taxable years following the taxable year of loss, if longer.

(2) For the purposes of this subdivision:

(A) "LAMBRA" means a local agency military base recovery area designated in accordance with Section 7114 of the Government Code.

(B) "Taxpayer" means a person or entity that conducts a trade or business within a LAMBRA and, for the first two taxable years, has a net increase in jobs (defined as 2,000 paid hours per employee per year) of one or more employees in the LAMBRA and this state.

(i) The net increase in the number of jobs shall be determined by subtracting the total number of full-time employees (defined as 2,000 paid hours per employee per year) the taxpayer employed in this state in the taxable year prior to commencing business operations in the LAMBRA from the total number of full-time employees the taxpayer employed in this state during the second taxable year after commencing business operations in the LAMBRA. For taxpayers who commence doing business in this state with their LAMBRA business operation, the number of employees for the taxable year

prior to commencing business operations in the LAMBRA shall be zero. The deduction shall be allowed only if the taxpayer has a net increase in jobs in the state, and if one or more full-time employees is employed within the LAMBRA.

(ii) The total number of employees employed in the LAMBRA shall equal the sum of both of the following:

(I) The total number of hours worked in the LAMBRA for the taxpayer by employees (not to exceed 2,000 hours per employee) who are paid an hourly wage divided by 2,000.

(II) The total number of months worked in the LAMBRA for the taxpayer by employees who are salaried employees divided by 12.

(iii) In the case of a taxpayer who first commences doing business in the LAMBRA during the taxable year, for purposes of subclauses (I) and (II), respectively, of clause (ii) the divisors "2,000" and "12" shall be multiplied by a fraction, the numerator of which is the number of months of the taxable year that the taxpayer was doing business in the LAMBRA and the denominator of which is 12.

(C) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 17276.1, attributable to the taxpayer's business activities within a LAMBRA prior to the LAMBRA expiration date. The attributable loss shall be determined in accordance with Chapter 17 (commencing with Section 25101) of Part 11, modified as follows:

(i) Loss shall be apportioned to a LAMBRA by multiplying total loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The LAMBRA" shall be substituted for "this state."

(D) A net operating loss carryover shall be a deduction only with respect to the taxpayer's business income attributable to a LAMBRA determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11, modified as follows:

(i) Business income shall be apportioned to a LAMBRA by multiplying total business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The LAMBRA" shall be substituted for "this state."

(iii) If a loss carryover is allowable pursuant to this section for any taxable year after the LAMBRA designation has expired, the LAMBRA shall be deemed to remain in existence for purposes of computing this limitation.

(E) "LAMBRA expiration date" means the date the LAMBRA designation expires, is no longer binding, or becomes inoperative pursuant to Section 7110 of the Government Code.

(d) (1) For each taxable year beginning on or after January 1, 1998, a person or entity that meets both of the following:

(A) Is engaged in a trade or business within a targeted tax area designated pursuant to Chapter 12.93 (commencing with Section 7097) of Division 7 of Title 1 of the Government Code.

(B) Is engaged in those lines of business described in Codes 2000 to 2099, inclusive; 2200 to 3999, inclusive; 4200 to 4299, inclusive; 4500 to 4599, inclusive; and 4700 to 5199, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition. In the case of any passthrough entity, the determination of whether a taxpayer is a qualified taxpayer under this section shall be made at the entity level.

(2) A net operating loss shall not be a net operating loss carryback to any taxable year and a net operating loss for any taxable year beginning on or after the date that the area in which the qualified taxpayer conducts a trade or business is designated as a targeted tax area shall be a net operating loss carryover to each of the 15 taxable years following the taxable year of loss.

(3) For purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 17276.1, attributable to the qualified taxpayer's business activities within the targeted tax area (as defined in Chapter 12.93 (commencing with Section 7097) of Division 7 of Title 1 of the Government Code) prior to the targeted tax area expiration date. That attributable loss shall be determined in accordance with Chapter 17 (commencing with Section 25101) of Part 11, modified for purposes of this subdivision as follows:

(i) Loss shall be apportioned to the targeted tax area by multiplying total loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The targeted tax area" shall be substituted for "this state."

(B) A net operating loss carryover shall be a deduction only with respect to the qualified taxpayer's business income attributable to the targeted tax area (as defined in Chapter 12.93 (commencing with Section 7097) of Division 7 of Title 1 of the Government Code) determined in accordance with Chapter 17 (commencing with Section 25101) of Part 11, modified for purposes of this subdivision as follows:

(i) Business income shall be apportioned to the targeted tax area by multiplying the total business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The targeted tax area" shall be substituted for "this state."

(C) If a loss carryover is allowable pursuant to this subdivision for any taxable year after the targeted tax area expiration date, the targeted tax area designation shall be deemed to remain in existence for purposes of computing the limitation specified in this subparagraph.

(D) "Targeted tax area expiration date" means the date the targeted tax area designation expires, is revoked, is no longer binding, or becomes inoperative.

(e) A taxpayer who qualifies as a "qualified taxpayer" shall, for the taxable year of the net operating loss and any taxable year to which that net operating loss may be carried, designate on the original return filed for each year the subdivision of this section which applies to that taxpayer with respect to that net operating loss. If the taxpayer is eligible to qualify under more than one subdivision of this section, the designation is to be made after taking into account subdivision (f).

(f) If a taxpayer is eligible to qualify under more than one subdivision of this section as a "qualified taxpayer," with respect to a net operating loss in a taxable year, the taxpayer shall designate which subdivision of this section is to apply to the taxpayer.

(g) Notwithstanding Section 17276, the amount of the loss determined under this section shall be the only net operating loss allowed to be carried over from that taxable year and the designation under subdivision (e) shall be included in the election under Section 17276.1.

SEC. 8. Section 17559 is added to the Revenue and Taxation Code, to read:

17559. (a) Section 451(e) of the Internal Revenue Code, relating to special rule for proceeds from livestock sold on account of drought, is modified by substituting the phrase "drought, flood, or other weather-related conditions, and that those conditions" in lieu of the phrase "drought conditions, and that these drought conditions" contained therein.

(b) This section shall apply to sales and exchanges after December 31, 1996.

SEC. 9. Section 17731.5 of the Revenue and Taxation Code, as added by Section 3 of Chapter 610 of the Statutes of 1997, is repealed.

SEC. 10. Section 17760.5 is added to the Revenue and Taxation Code, to read:

17760.5. (a) In the case of a qualified funeral trust—

(1) Subparts B, C, D, and E of Subchapter J of Chapter 1 of Subtitle A of the Internal Revenue Code shall not apply.

(2) No credit for personal exemption shall be allowed under Section 17054 or Section 17733.

(b) For purposes of this section, the term "qualified funeral trust" means any trust (other than a foreign trust) if all of the following apply:

(1) The trust arises as a result of a contract with a person engaged in the trade or business of providing funeral or burial services or property necessary to provide those services.

(2) The sole purpose of the trust is to hold, invest, and reinvest funds in the trust and to use the funds solely to make payments for

those services or property for the benefit of the beneficiaries of the trust.

(3) The only beneficiaries of the trust are individuals with respect to whom those services or property are to be provided at their death under contracts described in paragraph (1).

(4) The only contributions to the trust are contributions by or for the benefit of the beneficiaries.

(5) The trustee elects the application of this section.

(6) The trust would (but for the election described in paragraph (5)) be treated as owned under Subpart E of Subchapter J of Chapter 1 of Subtitle A of the Internal Revenue Code by the purchasers of the contracts described in paragraph (1).

(c) (1) The term "qualified funeral trust" shall not include any trust which accepts aggregate contributions by or for the benefit of an individual in excess of seven thousand dollars ($7,000).

(2) For purposes of paragraph (1), all trusts having trustees that are related persons shall be treated as one trust. For purposes of the preceding sentence, persons are related if any of the following are applicable:

(A) The relationship between those persons is described in Section 267 or 707(b) of the Internal Revenue Code.

(B) Those persons are treated as a single employer under Section 52(a) or (b) of the Internal Revenue Code for federal purposes.

(C) The Secretary of the Treasury determines that treating those persons as related is necessary to prevent avoidance of the purposes of Section 685 of the Internal Revenue Code (as added by Public Law 105-34).

(D) The Franchise Tax Board determines that treating those persons as related is necessary to prevent avoidance of the purposes of this section.

(3) In the case of any contract referred to in paragraph (1) of subdivision (b) which is entered into during any calendar year after 1998, the dollar amount referred to in paragraph (1) shall be increased by an amount equal to:

(A) That dollar amount, multiplied by

(B) The cost-of-living adjustment determined under Section 1(f)(3) of the Internal Revenue Code for that calendar year, by substituting "calendar year 1997" for "calendar year 1992" in subparagraph (B) thereof.

If any dollar amount after being increased under the preceding sentence is not a multiple of one hundred dollars ($100), that dollar amount shall be rounded to the nearest multiple of one hundred dollars ($100).

(d) Subdivision (e) of Section 17041 shall be applied to each qualified funeral trust by treating each beneficiary's interest in each qualified funeral trust as a separate trust.

(e) No gain or loss shall be recognized to a purchaser of a contract described in paragraph (1) of subdivision (b) by reason of any

payment from the trust to that purchaser by reason of cancellation of that contract. If any payment referred to in the preceding sentence consists of property other than money, the basis of the property in the hands of that purchaser shall be the same as the trust's basis in the property immediately before the payment.

(f) The Franchise Tax Board may, by forms and instructions, provide rules for simplified reporting of all trusts having a single trustee consistent with the rules prescribed by the Secretary of the Treasury under Section 685 of the Internal Revenue Code (as added by Public Law 105-34).

(g) This section shall apply to taxable years ending after August 5, 1997.

SEC. 11. Section 18036.5 is added to the Revenue and Taxation Code, to read:

18036.5. (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 in the case of property the acquisition of which resulted under Section 18038.5 in the nonrecognition of any part of the gain realized on the sale of other property, to the extent provided in paragraph (4) of subdivision (b) of Section 18038.5.

(b) This section shall apply to sales made after August 5, 1997.

SEC. 12. Section 18037.3 is added to the Revenue and Taxation Code, to read:

18037.3. (a) Section 1033(e) of the Internal Revenue Code, relating to livestock sold on account of drought, is modified by substituting the phrase "on account of drought, flood, or other weather-related conditions" in lieu of the phrase "on account of drought" contained therein.

(b) This section shall apply to sales and exchanges after December 31, 1996.

SEC. 13. Section 18038.5 is added to the Revenue and Taxation Code, to read:

18038.5. (a) In the case of any sale of qualified small business stock held by an individual for more than six months and with respect to which that individual elects the application of this section, gain from that sale shall be recognized only to the extent that the amount realized on that sale exceeds:

(1) The cost of any qualified small business stock purchased by the taxpayer during the 60-day period beginning on the date of that sale, reduced by

(2) Any portion of the cost previously taken into account under this section.

This section shall not apply to any gain which is treated as ordinary income for purposes of this part.

(b) For purposes of this section:

(1) The term "qualified small business stock" has the meaning given that term by subdivision (c) of Section 18152.5.

(2) A taxpayer shall be treated as having purchased any property if, but for paragraph (3), the unadjusted basis of that property in the hands of the taxpayer would be its cost (within the meaning of Section 1012 of the Internal Revenue Code).

(3) If gain from any sale is not recognized by reason of subdivision (a), that gain shall be applied to reduce (in the order acquired) the basis for determining gain or loss of any qualified small business stock which is purchased by the taxpayer during the 60-day period described in subdivision (a).

(4) For purposes of determining whether the nonrecognition of gain under subdivision (a) applies to stock which is sold, both of the following shall apply:

(A) The taxpayer's holding period for that stock and the stock referred to in paragraph (1) of subdivision (a) shall be determined without regard to section 1223 of the Internal Revenue Code.

(B) Only the first six months of the taxpayer's holding period for the stock referred to in paragraph (1) of subdivision (a) shall be taken into account for purposes of applying paragraph (2) of subdivision (c) of Section 18152.5.

(c) This section shall apply to sales made after August 5, 1997.

SEC. 14. Section 18155.5 is added to the Revenue and Taxation Code, to read:

18155.5. (a) Section 1223 of the Internal Revenue Code, relating to holding period of property, is modified to additionally provide that in determining the period for which the taxpayer has held property the acquisition of which resulted under Section 18038.5 in the nonrecognition of any part of the gain realized on the sale of other property, there shall be included the period for which that other property has been held as of the date of the sale.

(b) This section shall apply to sales made after August 5, 1997.

SEC. 15. Section 18510 of the Revenue and Taxation Code is amended to read:

18510. For taxable years beginning on or after January 1, 1997, for purposes of Sections 18501, 18505, and 18521, gross income shall be computed without regard to the exclusion provided for in Section 17152.

SEC. 15.5. Section 18572 is added to the Revenue and Taxation Code, to read:

18572. (a) In the case of a taxpayer determined by the Secretary of the Treasury or the Franchise Tax Board to be affected by a presidentially declared disaster (as defined by Section 1033(h)(3) of the Internal Revenue Code), under regulations prescribed by the Secretary of the Treasury, unless the Franchise Tax Board prescribes differently, a period of up to 90 days may be disregarded in determining, in respect of any tax liability (including any penalty, additional amount, or addition to the tax) of the taxpayer:

(1) Whether any of the acts described in paragraph (1) of Section 7508(a)(1) of the Internal Revenue Code were performed within the time prescribed therefor.

(2) The amount of any credit or refund.

(b) Subdivision (a) shall not apply for the purposes of determining interest on any overpayment or underpayment.

(c) This section shall apply with respect to any period for performing an act that has not expired before August 5, 1997.

SEC. 16. Section 19023 of the Revenue and Taxation Code is amended to read:

19023. For purposes of this article, in the case of a corporation, other than a bank or financial corporation, the term "estimated tax" means the amount which the corporation estimates as the amount of the tax imposed by Part 11 (commencing with Section 23001) and the amount of its liability for the tax of each wholly owned subsidiary under Section 23800.5; but in no event shall the estimated tax of a corporation subject to the tax imposed by Article 2 (commencing with Section 23151) of Chapter 2 of Part 11 be less than the minimum tax prescribed in Section 23153.

SEC. 17. Section 19024 of the Revenue and Taxation Code is amended to read:

19024. (a) In the case of banks and financial corporations, "estimated tax" means the amount which the bank or financial corporation estimates as the amount of the tax imposed by Part 11 (commencing with Section 23001) at the rate determined by the Franchise Tax Board for the preceding year pursuant to Section 23186.1 and the amount of its liability for the tax of each wholly owned subsidiary under Section 23800.5, but in no event shall the estimated tax of a bank or financial corporation be less than the minimum tax prescribed in Section 23153.

(b) In case of an increase or decrease in the rate of tax imposed under Section 23151 (tax on general corporations), a bank or financial corporation shall be required to increase or decrease the rate determined by the Franchise Tax Board for the preceding year by the same amount as the change in the rate imposed under Section 23151 determined in accordance with Section 24251 (relating to computation of tax when law changed).

SEC. 18. Section 19025 of the Revenue and Taxation Code is amended to read:

19025. (a) If the amount of estimated tax does not exceed the minimum tax specified by Section 23153, the entire amount of the estimated tax shall be due and payable on or before the 15th day of the fourth month of the income year.

(b) Except as provided in subdivision (c), if the amount of estimated tax exceeds the minimum tax specified by Section 23153, the amount payable shall be paid in installments as follows:

If the requirements of this subdivision are first met—	The following percentages of the estimated tax shall be paid on the 15th day of the—			
	4th month	6th month	9th month	12th month
Before the 1st day of the 4th month of the income year	25 (but not less than the minimum tax provided in Section 23153 and any tax under Section 23800.5)	25	25	25
After the last day of the 3rd month and before the 1st day of the 6th month of the income year	____	$33^1/_3$	$33^1/_3$	$33^1/_3$
After the last day of the 5th month and before the 1st day of the 9th month of the income year	____	____	50	50
After the last day of the 8th month and before the 1st day of the 12th month of the income year	____	____	____	100

(c) If a wholly owned subsidiary is first subject to tax under Section 23800.5 after the last day of the third month of the income year of

owner, the amount of the next installment of estimated tax under subdivision (b) after the wholly owned subsidiary is subject to tax under Section 23800.5 shall not be less than the amount of the tax of the wholly owned subsidiary under Section 23800.5 and an amount equal to that amount shall be due and payable on the date the installment is required to be paid. For purposes of determining which installment is the next installment of estimated tax under subdivision (b), subdivision (b) shall be modified by substituting "includes the tax of a wholly owned subsidiary under Section 23800.5" for "exceeds the minimum tax specified by Section 23153."

SEC. 19. Section 19109 is added to the Revenue and Taxation Code, to read:

19109. (a) If the Franchise Tax Board extends for any period the time for filing a return under Section 18572 or subdivision (a) of Section 18567 and the time for paying the tax under Section 18572 or subdivision (c) of Section 18567 (and waives any penalties relating to the failure to so file or so pay) for any individual located in a presidentially declared disaster area, the Franchise Tax Board shall, notwithstanding subdivision (b) of Section 18572, abate for that period the assessment of any interest prescribed under this article on that tax.

(b) For purposes of subdivision (a), the term "presidentially declared disaster area" means, with respect to any individual, any area which the President has determined during 1997 warrants assistance by the federal government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

(c) For purposes of this section, the term "individual" shall not include any estate or trust.

(d) This section shall apply to disasters declared after December 31, 1996.

SEC. 20. Section 19136.3 of the Revenue and Taxation Code is amended to read:

19136.3. (a) No addition to tax shall be made under Section 19136 for any period before April 16, 1998, with respect to any underpayment of an installment for the 1997 or 1998 taxable year, to the extent that the underpayment was created or increased by any provision of the act adding or amending this section.

(b) No addition to tax shall be made under Section 19142 for any period before April 16, 1998, with respect to any underpayment of an installment for the 1997 or 1998 income year, to the extent that the underpayment was created or increased by any provision of the act adding or amending this section.

(c) The Franchise Tax Board shall adopt procedures, forms, and instructions necessary to implement this section in a reasonable manner.

SEC. 21. Section 19147 of the Revenue and Taxation Code is amended to read:

19147. (a) Notwithstanding Sections 19142 to 19145, inclusive, the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax paid on or before the last date prescribed for the payment of the installment equals or exceeds the amount which would have been required to be paid on or before that date if the estimated tax were whichever of the following is the lesser:

(1) (A) The tax shown on the return of the taxpayer for the preceding income year if a return showing a liability for tax was filed by the taxpayer for the preceding year and that preceding year was a year of 12 months. The tax shown on the return, in the case of the tax imposed by Article 3 (commencing with Section 23181) of Chapter 2 of Part 11, means the amount of tax shown on the return for the income year as prescribed in Section 19021.

(B) In the case of a large corporation, subparagraph (A) shall not apply, except as provided in clauses (i) and (ii).

(i) Subparagraph (A) shall apply for purposes of determining the amount of the first required installment for any income year.

(ii) Any reduction in the first required installment by reason of clause (i) shall be recaptured by increasing the amount of the next required installment by the amount of that reduction.

(2) (A) An amount equal to the applicable percentage specified in Section 19144 of the tax for the income year computed by placing on an annualized basis the taxable income:

(i) For the first three months of the income year, in the case of the installment required to be paid in the fourth month.

(ii) For the first three months of the income year, in the case of the installment required to be paid in the sixth month.

(iii) For the first six months of the income year in the case of the installment required to be paid in the ninth month.

(iv) For the first nine months of the income year, in the case of the installment required to be paid in the 12th month of the taxable year.

(B) (i) If the taxpayer makes an election under this clause, each of the following shall apply:

(I) Clause (i) of subparagraph (A) shall be applied by substituting "two months" for "three months."

(II) Clause (ii) of subparagraph (A) shall be applied by substituting "four months" for "three months."

(III) Clause (iii) of subparagraph (A) shall be applied by substituting "seven months" for "six months."

(IV) Clause (iv) of subparagraph (A) shall be applied by substituting "ten months" for "nine months."

(ii) If the taxpayer makes an election under this clause, each of the following shall apply:

(I) Clause (ii) of subparagraph (A) shall be applied by substituting "five months" for "three months."

(II) Clause (iii) of subparagraph (A) shall be applied by substituting "eight months" for "six months."

(III) Clause (iv) of subparagraph (A) shall be applied by substituting "eleven months" for the "nine months."

(iii) An election under clause (i) or (ii) shall apply to the income year for which the election is made and shall be effective only if the election is made on or before the date required for the payment of the first required installment for that income year.

(iv) This subparagraph shall apply to income years beginning on or after January 1, 1997.

(C) For purposes of this paragraph, the taxable income shall be placed on an annualized basis in the following manner:

(i) Multiply by 12 the taxable income referred to in subparagraph (A).

(ii) Divide the resulting amount by the number of months in the income year referred to in subparagraph (A).

"Taxable income" as used in this paragraph means "net income" includable in the measure of tax or "alternative minimum taxable income" (as defined by Section 23455).

(D) In the case of any corporation which is subject to the tax imposed under Section 23731, any reference to taxable income shall be treated as including a reference to unrelated business taxable income and, except in the case of an election under subparagraph (B), each of the following shall apply:

(i) Clause (i) of subparagraph (A) shall be applied by substituting "two months" for "three months."

(ii) Clause (ii) of subparagraph (A) shall be applied by substituting "four months" for "three months."

(iii) Clause (iii) of subparagraph (A) shall be applied by substituting "seven months" for "six months."

(iv) Clause (iv) of subparagraph (A) shall be applied by substituting "ten months" for "nine months."

(3) The applicable percentage specified in Section 19144 or more of the tax for the income year was paid by withholding of tax pursuant to Section 18662.

(4) The applicable percentage specified in Section 19144 or more of the net income for the income year consists of items from which an amount was withheld pursuant to Section 18662, the amount of the first installment under Section 19025 equals at least the minimum franchise tax specified in Section 23153, and the amount of any installment under Section 19025 includes an amount equal to the applicable tax under Section 23800.5.

(b) (1) For purposes of this section, "large corporation" means any corporation if that corporation (or any predecessor corporation) had taxable income (computed without regard to net operating loss deductions) of one million dollars ($1,000,000) or more for any income year during the testing period.

(2) For purposes of this subdivision, "testing period" means the three income years immediately preceding the income year involved.

SEC. 22. Section 19149 of the Revenue and Taxation Code is amended to read:

19149. (a) Notwithstanding any other provision of Sections 19142 to 19151, inclusive, if the amount of estimated tax due and payable under Section 19025 is only the minimum franchise tax imposed by Section 23153 and, if applicable, the tax of a wholly owned subsidiary under Section 23800.5, then the addition to the tax with respect to any underpayment of any installment imposed by Section 19142 shall be calculated only on the basis of the amount of the minimum franchise tax and the amount of the tax of each wholly owned subsidiary.

(b) This section shall not apply to a large corporation as defined in subdivision (b) of Section 19147.

SEC. 23. Section 19184 of the Revenue and Taxation Code is amended to read:

19184. (a) A penalty of fifty dollars ($50) shall be imposed for each failure, unless it is shown that the failure is due to reasonable cause, by any person required to file who fails to file a report at the time and in the manner required by any of the following provisions:

(1) Subdivision (c) of Section 17507, relating to individual retirement accounts.

(2) Section 220(h) of the Internal Revenue Code, relating to medical savings accounts for taxable years beginning on or after January 1, 1997.

(3) Subdivision (h) of Section 23712, relating to education individual retirement accounts.

(b) (1) Any individual who:

(A) Is required to furnish information under Section 17508 as to the amount designated nondeductible contributions made for any taxable year, and

(B) Overstates the amount of those contributions made for that taxable year, shall pay a penalty of one hundred dollars ($100) for each overstatement unless it is shown that the overstatement is due to reasonable cause.

(2) Any individual who fails to file a form required to be filed by the Franchise Tax Board under Section 17508 shall pay a penalty of fifty dollars ($50) for each failure unless it is shown that the failure is due to reasonable cause.

(c) Article 3 (commencing with Section 19031) of this chapter (relating to deficiency assessments) shall not apply in respect of the assessment or collection of any penalty imposed under this section.

SEC. 24. Section 19280 of the Revenue and Taxation Code is amended to read:

19280. (a) (1) Fines, state or local penalties, forfeitures, restitution fines, restitution orders, or any other amounts imposed by a superior, municipal, or justice court of the State of California upon a person or any other entity that is due and payable in an amount totaling no less than two hundred fifty dollars ($250), in the aggregate, for criminal offenses, including all offenses involving a

violation of the Vehicle Code except offenses relating to parking or registration or offenses by pedestrians or bicyclists, may, no sooner than 90 days after payment of that amount becomes delinquent, be referred by the county or the state to the Franchise Tax Board for collection under guidelines prescribed by the Franchise Tax Board.

(2) For purposes of this subdivision:

(A) The amounts referred by the county or state under this section may include any amounts that a government entity may add to the court-imposed obligation as a result of the underlying offense, trial, or conviction. For purposes of this article, those amounts shall be deemed to be imposed by the court.

(B) Restitution orders may be referred to the Franchise Tax Board only by a government entity, as agreed upon by the Franchise Tax Board, provided that all of the following apply:

(i) The government entity has the authority to collect on behalf of the state or the victim.

(ii) The government entity shall be responsible for distributing the restitution order collections, as appropriate.

(iii) The government entity shall ensure, in making the referrals and distributions, that it coordinates with any other related collection activities that may occur by counties or other state agencies.

(iv) The government entity shall ensure compliance with laws relating to the reimbursement of the State Restitution Fund.

(C) The Franchise Tax Board shall establish criteria for referral, which shall include setting forth a minimum dollar amount subject to referral and collection.

(b) For the period January 1, 1995, to December 31, 1997, inclusive, for purposes of a manageable implementation and evaluation of the program authorized by this article, the Franchise Tax Board may limit referrals to nine counties.

(c) Upon written notice to the obligor from the Franchise Tax Board, any amount referred to the Franchise Tax Board under subdivision (a) and any interest thereon, including any interest on the amount referred under subdivision (a) that accrued prior to the date of referral, shall be treated as final and due and payable to the State of California, and shall be collected from the obligor 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.

(d) (1) Part 10 (commencing with Section 17001), this part, Part 10.7 (commencing with Section 21001), and Part 11 (commencing with Section 23001) shall apply to amounts 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 those laws had been incorporated in full

into this article, except to the extent that any provision is either inconsistent with this article or is not relevant to this article.

(2) Any information, information sources, or enforcement remedies and capabilities available to the court or the state referring the amount due described in subdivision (a), shall be available to the Franchise Tax Board to be used in conjunction with, or independent of, the information, information sources, or remedies and capabilities available to the Franchise Tax Board for purposes of administering Part 10 (commencing with Section 17001), this part, Part 10.7 (commencing with Section 21001), or Part 11 (commencing with Section 23001).

(e) The activities required to implement and administer this part shall not interfere with the primary mission of the Franchise Tax Board to administer Part 10 (commencing with Section 17001) and Part 11 (commencing with Section 23001).

(f) For amounts referred for collection under subdivision (a), interest shall accrue at the greater of the rate applicable to the amount due being collected or the rate provided under Section 19521. When notice of the amount due includes interest and is mailed to the obligor and the amount is paid within 15 days after the date of notice, interest shall not be imposed for the period after the date of notice.

(g) In no event shall a collection under this article be construed as a payment of income taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

SEC. 25. Section 19365 of the Revenue and Taxation Code, as added by Section 9 of Chapter 610 of the Statutes of 1997, is repealed.

SEC. 26. 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 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 17935 or Section 23081, the tax on limited liability companies, imposed

under Section 17941 or Section 23091, and the tax on registered limited liability partnerships and foreign limited liability partnerships imposed under Section 17948 or Section 23097.

(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 that do not contain carryover provisions.

(2) Credits that, 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 former Section 23612 (relating to sales and use tax credit).

(H) The credit allowed by Section 23612.2 (relating to enterprise zone sales or use tax credit).

(I) The credit allowed by Section 23612.6 (relating to Los Angeles Revitalization Zone sales tax credit).

(J) The credit allowed by former Section 23622 (relating to enterprise zone hiring credit).

(K) The credit allowed by Section 23622.7 (relating to enterprise zone hiring credit).

(L) The credit allowed by former Section 23623 (relating to program area hiring credit).

(M) For each income year beginning on or after January 1, 1994, the credit allowed by Section 23623.5 (relating to Los Angeles Revitalization Zone hiring credit).

(N) The credit allowed by Section 23625 (relating to Los Angeles Revitalization Zone hiring credit).

(O) The credit allowed by Section 23633 (relating to targeted tax area sales or use tax credit).

(P) The credit allowed by Section 23634 (relating to targeted tax area hiring credit).

(Q) The credit allowed by Section 23649 (relating to qualified property).

(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 that has been repealed or made inoperative shall continue to be allowed to be carried over under the provisions of that section as it read immediately prior to being repealed or becoming inoperative.

(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.

(h) Unless otherwise provided, in the case of an S corporation, any credit allowed by this part shall be computed at the S corporation level, and any limitation on the expenses qualifying for the credit or limitation upon the amount of the credit shall be applied to the S corporation and to each shareholder.

(i) (1) With respect to any taxpayer that directly or indirectly owns an interest in a business entity that is disregarded for tax purposes pursuant to Section 23038 and any regulations thereunder, the amount of any credit or credit carryforward allowable for any income year attributable to the disregarded business entity shall be limited in accordance with paragraphs (2) and (3).

(2) The amount of any credit otherwise allowed under this part, including any credit carryover from prior years, that may be applied to reduce the taxpayer's "tax," as defined in subdivision (a), for the income year shall be limited to an amount equal to the excess of the taxpayer's regular tax (as defined in Section 23455), determined by including income attributable to the disregarded business entity that generated the credit or credit carryover, over the taxpayer's regular tax (as defined in Section 23455), determined by excluding the income attributable to that disregarded business entity. No credit shall be allowed if the taxpayer's regular tax (as defined in Section 23455), determined by including the income attributable to the

disregarded business entity is less than the taxpayer's regular tax (as defined in Section 23455), determined by excluding the income attributable to the disregarded business entity.

(3) If the amount of a credit allowed pursuant to the section establishing the credit exceeds the amount allowable under this subdivision in any income year, the excess amount may be carried over to subsequent income years pursuant to subdivisions (d), (e), and (f).

SEC. 27. Section 23456 of the Revenue and Taxation Code is amended to read:

23456. For purposes of this part, Section 56 of the Internal Revenue Code is modified as follows:

(a) (1) Section 56(a)(2) of the Internal Revenue Code, relating to mining exploration and development costs, shall apply only to expenses incurred during income years beginning on or after January 1, 1988.

(2) Section 56(a)(5) of the Internal Revenue Code, relating to pollution control facilities, shall apply only to amounts allowable as a deduction under Section 24372.3.

(3) Section 56(a)(6) of the Internal Revenue Code, relating to installment sales of certain property, shall not apply to payments received in income years beginning on or after January 1, 1997, with respect to dispositions occurring in income years beginning after December 31, 1987.

(b) 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."

(c) Section 56(d)(1) of the Internal Revenue Code, relating to the alternative tax net operating loss deduction, is modified to include the provisions of Section 25108.

(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) of the Internal Revenue Code, relating to adjustments based on adjusted current earnings, is modified to provide that for corporations whose income is determined under Chapter 17 (commencing with Section 25101), adjusted current earnings shall be allocated and apportioned in the same manner as net income is allocated and apportioned for purposes of the regular tax. In addition, each of the following shall apply:

(1) Sections 56(g)(1)(A) and 56(g)(3) of the Internal Revenue Code are modified to provide that the term "adjusted current earnings" means the sum of the adjusted current earnings of that corporation apportionable to this state and the adjusted current earnings allocable to this state.

(2) Section 56(g)(1)(B) of the Internal Revenue Code is modified to provide that the term "alternative minimum taxable income" means the sum of the alternative minimum taxable income of that corporation apportionable to this state and the alternative minimum taxable income allocable to this state.

(f) 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, other than residential rental property for which an election was made under former Section 24349.5, the amount allowable as depreciation or amortization with respect to that property shall be the same amount that would have been allowable for the income year had the taxpayer depreciated the property under the straight line method for each income year of the useful life (determined without regard to Section 24354.2) 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, other than residential rental property for which an election was made under former Section 24349.5, 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 straight line 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.

(4) The last sentence of Section 56(g)(4)(A)(i) of the Internal Revenue Code, shall not apply.

(g) (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.

(h) Section 56(g)(4)(I) of the Internal Revenue Code, relating to treatment of charitable contributions, shall not apply.

SEC. 27.5. Section 23622.8 of the Revenue and Taxation Code is amended to read:

23622.8. (a) For each income year beginning on or after January 1, 1998, there shall be allowed a credit against the "tax" (as defined in Section 23036) to a qualified taxpayer for hiring a qualified disadvantaged individual during the income year for employment in the Manufacturing Enhancement Area. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of the qualified wages in the first year of employment.

(2) Forty percent of the qualified wages in the second year of employment.

(3) Thirty percent of the qualified wages in the third year of employment.

(4) Twenty percent of the qualified wages in the fourth year of employment.

(5) Ten percent of the qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means:

(A) That portion of wages paid or incurred by the qualified taxpayer during the income year to qualified disadvantaged individuals that does not exceed 150 percent of the minimum wage.

(B) The total amount of qualified wages which may be taken into account for purposes of claiming the credit allowed under this section shall not exceed two million dollars ($2,000,000) per income year.

(C) Wages received during the 60-month period beginning with the day the qualified disadvantaged individual commences employment with the qualified taxpayer.

(D) Qualified wages do not include any wages paid or incurred by the qualified taxpayer on or after the Manufacturing Enhancement Area expiration date. However, wages paid or incurred with respect to qualified employees who are employed by the qualified taxpayer within the Manufacturing Enhancement Area within the 60-month period prior to the Manufacturing Enhancement Area expiration date shall continue to qualify for the credit under this section after the Manufacturing Enhancement Area expiration date, in accordance with all provisions of this section applied as if the Manufacturing Enhancement Area designation were still in existence and binding.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) "Manufacturing Enhancement Area" means an area designated pursuant to Section 7073.8 of the Government Code according to the procedures of Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(4) "Manufacturing Enhancement Area expiration date" means the date the Manufacturing Enhancement Area designation expires, is no longer binding, or becomes inoperative.

(5) "Qualified disadvantaged individual" means an individual who satisfies all of the following requirements:

(A) (i) At least 90 percent of whose services for the qualified taxpayer during the income year are directly related to the conduct of the qualified taxpayer's trade or business located in a Manufacturing Enhancement Area.

(ii) Who performs at least 50 percent of his or her services for the qualified taxpayer during the income year in the Manufacturing Enhancement Area.

(B) Who is hired by the qualified taxpayer after the designation of the area as a Manufacturing Enhancement Area in which the individual's services were primarily performed.

(C) Who is any of the following immediately preceding the individual's commencement of employment with the qualified taxpayer:

(i) An individual who has been determined eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.).

(ii) Any voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 as provided pursuant to

Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(iii) Any individual who has been certified eligible by the Employment Development Department under the federal Targeted Jobs Tax Credit Program, whether or not this program is in effect.

(6) "Qualified taxpayer" means any corporation engaged in a trade or business within a Manufacturing Enhancement Area designated pursuant to Section 7073.8 of the Government Code and that meets both of the following requirements:

(A) Is engaged in those lines of business described in Codes 2011 to 3999, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(B) At least 30 percent of the corporation's work force hired after the designation of the Manufacturing Enhancement Area is composed of qualified disadvantaged individuals who, at the time of hire, are residents of the county in which the Manufacturing Enhancement Area is located.

(c) (1) For purposes of this section, all of the following apply:

(A) All employees of all corporations that are members of the same controlled group of corporations shall be treated as employed by a single qualified taxpayer.

(B) The credit (if any) allowable by this section with respect to each member shall be determined by reference to its proportionate share of the expenses of the qualified wages giving rise to the credit and shall be allocated in that manner.

(C) Principles that apply in the case of controlled groups of corporations, as specified in subdivision (d) of Section 23622.7, shall apply with respect to determining employment.

(2) If a qualified taxpayer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (d)) for any calendar year ending after that acquisition, the employment relationship between a qualified disadvantaged individual and a qualified taxpayer shall not be treated as terminated if the qualified disadvantaged individual continues to be employed in that trade or business.

(d) (1) If the employment of any qualified disadvantaged individual, with respect to whom qualified wages are taken into account under subdivision (b) is terminated by the qualified taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that qualified disadvantaged individual completes 90 days of employment with the qualified taxpayer, the tax imposed by this part for the income year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that income year

and all prior income years attributable to qualified wages paid or incurred with respect to that qualified disadvantaged individual.

(2) (A) Paragraph (1) does not apply to any of the following:

(i) A termination of employment of a qualified disadvantaged individual who voluntarily leaves the employment of the qualified taxpayer.

(ii) A termination of employment of a qualified disadvantaged individual who, before the close of the period referred to in paragraph (1), becomes disabled to perform the services of that employment, unless that disability is removed before the close of that period and the qualified taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of a qualified disadvantaged individual, if it is determined under the applicable employment compensation laws that the termination was due to the misconduct of that individual.

(iv) A termination of employment of a qualified disadvantaged individual due to a substantial reduction in the trade or business operations of the qualified taxpayer.

(v) A termination of employment of a qualified disadvantaged individual, if that individual is replaced by other qualified disadvantaged individuals so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the qualified taxpayer and a qualified disadvantaged individual shall not be treated as terminated by either of the following:

(i) By a transaction to which Section 381(a) of the Internal Revenue Code applies, if the qualified disadvantaged individual continues to be employed by the acquiring corporation.

(ii) By reason of a mere change in the form of conducting the trade or business of the qualified taxpayer, if the qualified disadvantaged individual continues to be employed in that trade or business and the qualified taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(e) The credit shall be reduced by the credit allowed under Section 23621. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the qualified taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (f) or (g).

(f) In the case where the credit otherwise allowed under this section exceeds the "tax" for the income year, that portion of the credit that exceeds the "tax" may be carried over and added to the

credit, if any, in succeeding years, until the credit is exhausted. The credit shall be applied first to the earliest income years possible.

(g) (1) The amount of credit otherwise allowed under this section, including prior year credit carryovers, that may reduce the "tax" for the income year shall not exceed the amount of tax that would be imposed on the qualified taxpayer's business income attributed to a Manufacturing Enhancement Area determined as if that attributed income represented all of the net income of the qualified taxpayer subject to tax under this part.

(2) The amount of attributed income described in paragraph (1) shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified for purposes of this section as follows:

(A) Income shall be apportioned to a Manufacturing Enhancement Area by multiplying total business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) "The Manufacturing Enhancement Area" shall be substituted for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding income years, as if it were an amount exceeding the "tax" for the income year, as provided in subdivision (g).

(h) If the taxpayer is allowed a credit pursuant to this section for qualified wages paid or incurred, only one credit shall be allowed to the taxpayer under this part with respect to any wage consisting in whole or in part of those qualified wages.

SEC. 28. Section 23800.5 of the Revenue and Taxation Code, as added by Section 11 of Chapter 610 of the Statutes of 1997, is repealed.

SEC. 29. Section 23800.5 of the Revenue and Taxation Code, as added by Section 72 of Chapter 611 of the Statutes of 1997, is amended to read:

23800.5. (a) Section 1361(b)(2)(A) of the Internal Revenue Code, relating to ineligible corporation defined, shall not apply and in lieu thereof, for purposes of Section 1361(b)(1) of the Internal Revenue Code, Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), and this part, "ineligible corporation" shall include a savings and loan association, bank, or financial corporation which uses the reserve method of accounting for bad debts described in Section 24348.

(b) Section 1361(b)(3) of the Internal Revenue Code, relating to treatment of certain wholly owned subsidiaries, is modified as follows:

(1) For purposes of Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), and this part:

(A) Section 1361(b)(3)(A)(i) of the Internal Revenue Code shall apply, except as provided in subparagraph (B).

(B) There is hereby imposed a tax annually in an amount equal to the applicable amount specified in paragraph (1) of subdivision (d) of Section 23153 on a qualified Subchapter S subsidiary that is incorporated under the laws of this state, qualified to transact intrastate business in this state pursuant to Chapter 21 (commencing with Section 2100) of Division 1 of Title 1 of the Corporations Code, or doing business in this state.

(C) Every qualified Subchapter S subsidiary described in subparagraph (B) shall be subject to the tax imposed under subparagraph (B) from the earlier of the date of incorporation, qualification, or commencement of business in this state, until the effective date of dissolution or withdrawal as provided in Section 23331, or, if later, the date the corporation ceases to do business in this state.

(2) For purposes of Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), and this part:

(A) Section 1361(b)(3)(A)(ii) of the Internal Revenue Code shall not apply and, in lieu thereof, subparagraph (B) shall apply and all references to Section 1361(b)(3)(A)(ii) of the Internal Revenue Code shall be treated as a reference to subparagraph (B).

(B) All activities, assets, liabilities, including liability for the tax imposed under this subdivision, and items of income, deduction, and credit of a qualified Subchapter S subsidiary shall be treated as activities (including activities for purposes of Section 23101), assets, liabilities, and those items, as the case may be, of the "S corporation."

(3) Section 1361(b)(3)(B) of the Internal Revenue Code is modified to include the following requirements in addition to the requirements contained therein:

(A) The "S corporation" has in effect a valid election to treat the corporation as a qualified Subchapter S subsidiary for federal purposes.

(B) An election made by the "S corporation" under Section 1361(b)(3)(B)(ii) of the Internal Revenue Code to treat the corporation as a qualified Subchapter S subsidiary for federal purposes shall be treated for purposes of this part as an election made by the "S corporation" under this subdivision and a separate election under paragraph (3) of subdivision (e) of Section 23051.5 shall not be allowed.

(C) No election under this subdivision shall be allowed unless the "S corporation" has made the election under Section 1361(b)(3)(B)(ii) of the Internal Revenue Code to treat the corporation as a qualified Subchapter S subsidiary for federal purposes.

(c) Section 1361(c)(7) of the Internal Revenue Code, relating to certain exempt organizations permitted as shareholders, is modified by substituting a reference to Section 23701d in lieu of the reference to Section 501(c)(3) of the Internal Revenue Code and by

substituting a reference to Section 23701 in lieu of the reference to Section 501(a) of the Internal Revenue Code.

(d) Section 1361(e)(1)(B)(ii) of the Internal Revenue Code, relating to certain trusts not eligible, is modified by substituting "under Part 10 (commencing with Section 17001) or this part" in lieu of "under this subtitle."

(e) Section 1361(e)(3) of the Internal Revenue Code, relating to election, is modified to include the following provisions:

(1) An election made by the trustee under Section 1361(e) of the Internal Revenue Code to be an electing small business trust for federal purposes shall be treated for purposes of this part as an election made by the trustee under this subdivision and a separate election under paragraph (3) of subdivision (e) of Section 23051.5 shall not be allowed. Any election made shall apply to the taxable year of the trust for which made and to all subsequent taxable years of the trust, unless revoked with the consent of the Franchise Tax Board.

(2) No election under this subdivision shall be allowed unless the trustee has made the election under Section 1361(e) of the Internal Revenue Code to be an electing small business trust for federal purposes.

SEC. 30. Section 23802 of the Revenue and Taxation Code is amended to read:

23802. (a) Section 1363(a) of the Internal Revenue Code, relating to the taxability of an "S corporation," shall not be applicable.

(b) Corporations qualifying under this chapter shall continue to be subject to the taxes imposed under Chapter 2 (commencing with Section 23101) and Chapter 3 (commencing with Section 23501), except as follows:

(1) The tax imposed under Section 23151 or 23501 shall be imposed at a rate of $1^1/_2$ 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.

(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 passthrough 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. 31. Section 23813 of the Revenue and Taxation Code, as added by Section 18 of Chapter 610 of the Statues of 1997, is repealed.

SEC. 32. Section 24347.4 is added to the Revenue and Taxation Code, to read:

24347.4. (a) Section 165(i) of the Internal Revenue Code, relating to disaster losses, is modified to additionally provide that an

appraisal for the purpose of obtaining a loan of federal funds or a loan guarantee from the federal government as a result of a presidentially declared disaster (as defined by Section 1033(h)(3) of the Internal Revenue Code) may be used to establish the amount of any loss described in Section 165(i)(1) or (2) of the Internal Revenue Code to the extent provided in regulations or other guidance of the Secretary of the Treasury under Section 165(i)(4) of the Internal Revenue Code (as added by Section 912 of Public Law 105-34).

(b) This section shall apply on and after August 5, 1997.

SEC. 33. Section 24416.2 of the Revenue and Taxation Code is amended to read:

24416.2. The term "qualified taxpayer" as used in Section 24416.1 means any of the following:

(a) A corporation engaged in the conduct of a trade or business within an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(1) A net operating loss shall not be a net operating loss carryback for any income year and a net operating loss for any income year beginning on or after the date that the area in which the taxpayer conducts a trade or business is designated as an enterprise zone shall be a net operating loss carryover to each of the 15 income years following the income year of loss.

(2) For purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 24416.1, attributable to the taxpayer's business activities within the enterprise zone (as defined in Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code) prior to the enterprise zone expiration date. That attributable loss shall be determined in accordance with Chapter 17 (commencing with Section 25101), modified for purposes of this section by substituting "enterprise zone" for "this state."

(B) A net operating loss carryover shall be a deduction only with respect to the taxpayer's business income attributable to the enterprise zone (as defined in Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code) determined in accordance with Chapter 17 (commencing with Section 25101), modified for purposes of this section by substituting "enterprise zone" for "this state."

(C) If a loss carryover is allowable pursuant to this section for any income year after the enterprise zone designation has expired, the enterprise zone shall be deemed to remain in existence for purposes of computing the limitation set forth in subparagraph (B) and allowing a net operating loss deduction.

(D) "Enterprise zone expiration date" means the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(b) A corporation engaged in the conduct of a trade or business within the Los Angeles Revitalization Zone designated pursuant to Section 7102 of the Government Code.

(1) (A) A net operating loss shall not be a net operating loss carryback for any income year and, except as provided in subparagraph (B), a net operating loss for any income year beginning on or after the date the area in which the taxpayer conducts a trade or business is designated the Los Angeles Revitalization Zone shall be a net operating loss carryover to each following income year that ends before the Los Angeles Revitalization Zone expiration date or to each of the 15 income years following the income year of loss, if longer.

(B) In the case of a financial institution to which Section 585, 586, or 593 of the Internal Revenue Code applies, a net operating loss for any income year beginning on or after January 1, 1984, shall be a net operating loss carryover to each of the five years following the income year of the loss. Subdivision (b) of Section 24416.1 shall not apply.

(2) For the purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 24416.1, attributable to the taxpayer's business activities within the Los Angeles Revitalization Zone (as defined in Section 7102 of the Government Code) prior to the Los Angeles Revitalization Zone expiration date. The attributable loss shall be determined in accordance with Chapter 17 (commencing with Section 25101), modified as follows:

(i) The loss shall be apportioned to the Los Angeles Revitalization Zone by multiplying the loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The Los Angeles Revitalization Zone" shall be substituted for this state.

(B) A net operating loss carryover shall be a deduction only with respect to the taxpayer's business income attributable to the Los Angeles Revitalization Zone (as defined in Section 7102 of the Government Code) determined in accordance with paragraph (3).

(C) If a loss carryover is allowable pursuant to this section for any income year after the Los Angeles Revitalization Zone designation has expired, the Los Angeles Revitalization Zone shall be deemed to remain in existence for purposes of computing the limitation set forth in subparagraph (B) and allowing a net operating loss deduction.

(3) Attributable income shall be that portion of the taxpayer's California source business income which is apportioned to the Los Angeles Revitalization Zone. For that purpose, the taxpayer's business income attributable to sources in this state first shall be determined in accordance with Chapter 17 (commencing with Section 25101). That business income shall be further apportioned to

the Los Angeles Revitalization Zone in accordance with Article 2 (commencing with Section 25120) of Chapter 17, modified as follows:

(A) Business income shall be apportioned to the Los Angeles Revitalization Zone by multiplying total California business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the Los Angeles Revitalization Zone during the income year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the income year.

(C) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the Los Angeles Revitalization Zone during the income year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the income year.

(4) "Los Angeles Revitalization Zone expiration date" means the date the Los Angeles Revitalization Zone designation expires, is repealed, or becomes inoperative pursuant to Section 7102, 7103, or 7104 of the Government Code.

(5) This subdivision shall be inoperative on the first day of the income year beginning on or after the determination date, and each income year thereafter, with respect to the taxpayer's business activities within a geographic area that is excluded from the map pursuant to Section 7102 of the Government Code, or an excluded area determined pursuant to Section 7104 of the Government Code. The determination date is the earlier of the first effective date of a determination under subdivision (c) of Section 7102 of the Government Code occurring after December 1, 1994, or the first effective date of an exclusion of an area from the amended Los Angeles Revitalization Zone under Section 7104 of the Government Code. However, if the taxpayer has any unused loss amount as of the date this section becomes inoperative, that unused loss amount may continue to be carried forward as provided in this subdivision.

(6) This subdivision shall cease to be operative on January 1, 1998. However, any unused net operating loss may continue to be carried over to following years as provided in this subdivision.

(c) For each income year beginning on or after January 1, 1995, and before January 1, 2003, a taxpayer engaged in the conduct of a trade or business within a LAMBRA.

(1) (A) A net operating loss shall not be a net operating loss carryback for any income year and, except as provided in subparagraph (B), a net operating loss for any income year beginning on or after the date the area in which the taxpayer conducts a trade or business is designated a LAMBRA shall be a net operating loss carryover to each following income year that ends

before the LAMBRA expiration date or to each of the 15 income years following the income year of loss, if longer.

(B) In the case of a financial institution to which Section 585, 586, or 593 of the Internal Revenue Code applies, a net operating loss for any income year beginning on or after January 1, 1984, shall be a net operating loss carryover to each of the five years following the income year of the loss. Subdivision (b) of Section 24416.1 shall not apply.

(2) For the purposes of this subdivision:

(A) "LAMBRA" means a local agency military base recovery area designated in accordance with Section 7114 of the Government Code.

(B) "Taxpayer" means a corporation that conducts a trade or business within a LAMBRA and, for the first two income years, has a net increase in jobs (defined as 2,000 paid hours per employee per year) of one or more employees in the LAMBRA and this state.

(i) The net increase in the number of jobs shall be determined by subtracting the total number of full-time employees (defined as 2,000 paid hours per employee per year) the taxpayer employed in this state in the income year prior to commencing business operations in the LAMBRA from the total number of full-time employees the taxpayer employed in this state during the second income year after commencing business operations in the LAMBRA. For taxpayers who commence doing business in this state with their LAMBRA business operation, the number of employees for the income year prior to commencing business operations in the LAMBRA shall be zero. The deduction shall be allowed only if the taxpayer has a net increase in jobs in the state, and if one or more full-time employees is employed within the LAMBRA.

(ii) The total number of employees employed in the LAMBRA shall equal the sum of both of the following:

(I) The total number of hours worked in the LAMBRA for the taxpayer by employees (not to exceed 2,000 hours per employee) who are paid an hourly wage divided by 2,000.

(II) The total number of months worked in the LAMBRA for the taxpayer by employees who are salaried employees divided by 12.

(iii) In the case of a taxpayer that first commences doing business in the LAMBRA during the income year, for purposes of subclauses (I) and (II), respectively, of clause (ii) the divisors "2,000" and "12" shall be multiplied by a fraction, the numerator of which is the number of months of the income year that the taxpayer was doing business in the LAMBRA and the denominator of which is 12.

(C) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 24416.1, attributable to the taxpayer's business activities within a LAMBRA prior to the LAMBRA expiration date. The attributable loss shall be determined in accordance with Chapter 17 (commencing with Section 25101), modified as follows:

(i) Loss shall be apportioned to a LAMBRA by multiplying the loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The LAMBRA" shall be substituted for "this state."

(D) A net operating loss carryover shall be a deduction only with respect to the taxpayer's business income attributable to a LAMBRA determined in accordance with Chapter 17 (commencing with Section 25101), modified as follows:

(i) Business income shall be apportioned to a LAMBRA by multiplying total business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The LAMBRA" shall be substituted for "this state."

(iii) If a loss carryover is allowable pursuant to this section for any income year after the LAMBRA designation has expired, the LAMBRA shall be deemed to remain in existence for purposes of computing this limitation.

(E) "LAMBRA expiration date" means the date the LAMBRA designation expires, is no longer binding, or becomes inoperative pursuant to Section 7110 of the Government Code.

(d) (1) For each income year beginning on or after January 1, 1998, a corporation that meets both of the following:

(A) Is engaged in the conduct of a trade or business within a targeted tax area designated pursuant to Chapter 12.93 (commencing with Section 7097) of Division 7 of Title 1 of the Government Code.

(B) Is engaged in those lines of business described in Codes 2000 to 2099, inclusive; 2200 to 3999, inclusive; 4200 to 4299, inclusive; 4500 to 4599, inclusive; and 4700 to 5199, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition. In the case of any passthrough entity, the determination of whether a taxpayer is a qualified taxpayer shall be made at the entity level.

(2) A net operating loss shall not be a net operating loss carryback for any income year and a net operating loss for any income year beginning on or after the date that the area in which the qualified taxpayer conducts a trade or business is designated as a targeted tax area shall be a net operating loss carryover to each of the 15 income years following the income year of loss.

(3) For purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 24416.1, attributable to the qualified taxpayer's business activities within the targeted tax area (as defined in Chapter 12.93 (commencing with Section 7097) of Division 7 of Title 1 of the Government Code) prior to the targeted tax area expiration date. That attributable loss shall

be determined in accordance with Chapter 17 (commencing with Section 25101), modified for purposes of this subdivision as follows:

(i) Loss shall be apportioned to the targeted tax area by multiplying total loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The targeted tax area" shall be substituted for "this state."

(B) A net operating loss carryover shall be a deduction only with respect to the qualified taxpayer's business income attributable to the targeted tax area (as defined in Chapter 12.93 (commencing with Section 7097) of Division 7 of Title 1 of the Government Code) determined in accordance with Chapter 17 (commencing with Section 25101), modified for purposes of this subdivision as follows:

(i) Business income shall be apportioned to the targeted tax area by multiplying the total business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The targeted tax area" shall be substituted for "this state."

(C) If a loss carryover is allowable pursuant to this subdivision for any income year after the targeted tax area expiration date, the targeted tax area designation shall be deemed to remain in existence for purposes of computing the limitation specified in this subparagraph.

(D) "Targeted tax area expiration date" means the date the targeted tax area designation expires, is revoked, is no longer binding, or becomes inoperative.

(e) A taxpayer who qualifies as a "qualified taxpayer" shall, for the income year of the net operating loss and any income year to which that net operating loss may be carried, designate on the original return filed for each year the subdivision of this section which applies to that taxpayer with respect to that net operating loss. If the taxpayer is eligible to qualify under more than one subdivision of this section, the designation is to be made after taking into account subdivision (f).

(f) If a taxpayer is eligible to qualify under more than one subdivision of this section as a "qualified taxpayer," with respect to a net operating loss in an income year, the taxpayer shall designate which subdivision of this section is to apply to the taxpayer.

(g) Notwithstanding Section 24416, the amount of the loss determined under this section shall be the only net operating loss allowed to be carried over from that income year and the designation under subdivision (e) shall be included in the election under Section 24416.1.

SEC. 34. Section 24652.5 is added to the Revenue and Taxation Code, to read:

24652.5. (a) (1) Section 447(i)(3) of the Internal Revenue Code, relating to reduction in account if farming business contracts, shall not apply.

(2) Section 447(i)(4) of the Internal Revenue Code, relating to income inclusions, shall not apply.

(3) (A) No suspense account may be established under Section 447(i) of the Internal Revenue Code, relating to suspense account for family corporations, by any corporation required by Section 447 of the Internal Revenue Code, relating to method of accounting for corporations engaged in farming, to change its method of accounting for any income year ending after June 8, 1997.

(B) (i) Each suspense account under Section 447(i) of the Internal Revenue Code shall be reduced (but not below zero) for each income year beginning after June 8, 1997, by an amount equal to the lesser of:

(I) The applicable portion of the account.

(II) Fifty percent of the net income of the corporation for the income year, or, if the corporation has no net income for that year, the amount of any net operating loss (as defined in Section 172 of the Internal Revenue Code and as modified for purposes of this part) for that income year.

For purposes of the preceding sentence, the amount of net income and net operating loss shall be determined without regard to this paragraph.

(ii) The amount of the applicable portion for any income year shall be reduced (but not below zero) by the amount of any reduction required for the income year under any other provision of Section 447(i) of the Internal Revenue Code.

(iii) Any reduction in a suspense account under this paragraph shall be included in gross income for the income year of the reduction.

(C) For purposes of subparagraph (B), the term "applicable portion" means, for any income year, the amount which would ratably reduce the amount in the account (after taking into account prior reductions) to zero over the period consisting of that income year and the remaining income years in those first 20 income years.

(D) Any amount in the account as of the close of that 20th year referred to in subparagraph (C) shall be treated as the applicable portion for each succeeding year thereafter to the extent not reduced under this paragraph for any prior income year after the 20th year.

(b) This section shall apply to income years ending on or after December 31, 1997.

SEC. 35. Section 24661.5 is added to the Revenue and Taxation Code, to read:

24661.5. (a) Section 451(e) of the Internal Revenue Code, relating to special rule for proceeds from livestock sold on account of drought, is modified by substituting the phrase "drought, flood, or other weather-related conditions, and that those conditions" in lieu of the phrase "drought conditions, and that these drought conditions" contained therein.

(b) This section shall apply to sales and exchanges after December 31, 1996.

SEC. 36. Section 24871.5 is added to the Revenue and Taxation Code, to read:

24871.5. (a) Section 851(b)(3) of the Internal Revenue Code shall not apply.

(b) This section shall apply in determining whether an entity qualifies as a regulated investment company for income years of that entity beginning after August 5, 1997.

SEC. 37. Section 24872.4 is added to the Revenue and Taxation Code, to read:

24872.4. (a) (1) Section 856(a)(6) of the Internal Revenue Code is modified by substituting the phrase "subject to the provisions of paragraph (2), which is not" for the phrase "which is not."

(2) Section 856 of the Internal Revenue Code is modified to additionally provide that a corporation, trust, or association that meets both of the following requirements, shall be treated as having met the requirement of Section 856(a)(6) of the Internal Revenue Code for the income year:

(A) For an income year that meets the requirements of paragraph (2) of subdivision (a) of Section 24872.7.

(B) Does not know, or exercising reasonable diligence would not have known, whether the entity failed to meet the requirement of Section 856(a)(6) of the Internal Revenue Code.

(b) (1) Section 856(d)(2)(C) of the Internal Revenue Code shall not apply.

(2) Section 856(d)(2) of the Internal Revenue Code is modified to additionally provide that the term "rents from real property" does not include "impermissible tenant service income."

(A) The term "impermissible tenant service income" means, with respect to any real or personal property, any amount received or accrued directly or indirectly by the real estate investment trust for either of the following:

(i) Services furnished or rendered by the trust to the tenants of the property.

(ii) Managing or operating that property.

(B) If the amount described in subparagraph (A) with respect to a property for any income year exceeds one percent of all amounts received or accrued during the income year directly or indirectly by the real estate investment trust with respect to that property, the impermissible tenant service income of the trust with respect to the property shall include all those amounts.

(C) For purposes of subparagraph (A):

(i) Services furnished or rendered, or management or operation provided, through an independent contractor from whom the trust itself does not derive or receive any income shall not be treated as furnished, rendered, or provided by the trust.

(ii) There shall not be taken into account any amount which would be excluded from unrelated business taxable income under Section 512(b)(3) of the Internal Revenue Code if received by an organization described in subdivision (b) of Section 17651 of Part 10 or Section 23731.

(D) For purposes of subparagraph (A), the amount treated as received for any service (or management or operation) shall not be less than 150 percent of the direct cost of the trust in furnishing or rendering the service (or providing the management or operation).

(E) For purposes of Sections 856(c)(2) and (3) of the Internal Revenue Code, amounts described in subparagraph (A) shall be included in the gross income of the corporation, trust, or association.

(c) (1) Section 856(d)(5) of the Internal Revenue Code, relating to constructive ownership of stock, is modified to additionally provide that in determining the ownership of stock under Section 318(a) of the Internal Revenue Code, Section 318(a)(3)(A) of the Internal Revenue Code shall be applied in the case of a partnership by taking into account only partners who own (directly or indirectly) 25 percent or more of the capital interest, or the profits interest, in the partnership.

(d) Section 856(e) of the Internal Revenue Code, relating to special rules for foreclosure property, is modified as follows:

(1) By substituting in Section 856(e)(2) of the Internal Revenue Code the phrase "as of the close of the third income year following the income year in which the trust acquired such property" for the phrase "on the date which is two years after the date the trust acquired such property."

(2) By substituting in Section 856(e)(3) of the Internal Revenue Code.

(A) The phrase "one extension" for the phrase "one or more extensions."

(B) The phrase "beyond the close of the third income year following the last income year in the period under Section 856(e)(2) of the Internal Revenue Code" for the phrase "beyond the date which is six years after the date such trust acquired such property."

(3) Section 856(e)(4) of the Internal Revenue Code is modified to additionally provide that for purposes of Section 856(e)(4)(C) of the Internal Revenue Code, property shall not be treated as used in a trade or business by reason of any activities of the real estate investment trust with respect to that property to the extent that those activities would not result in amounts received or accrued, directly or indirectly, with respect to that property being treated as other than rents from real property.

(4) (A) The last sentence in Section 856(e)(5) of the Internal Revenue Code shall not apply.

(B) (i) An election under Section 856(e)(5) of the Internal Revenue Code (as amended by Section 1257 of the Public Law 105-34) for federal purposes shall be treated for purposes of this part

as an election made by the real estate investment trust under this subdivision and a separate election under paragraph (3) of subdivision (e) of Section 23051.5 shall not be allowed.

(ii) Any revocation of an election under Section 856(e)(5) of the Internal Revenue Code (as amended by Section 1257 of Public Law 105-34) for federal purposes shall be treated for purposes of this part as a revocation of the election made by the real estate investment trust under this subdivision and a separate election under paragraph (3) of subdivision (e) of Section 23051.5 shall not be allowed with respect to the property for any subsequent income year.

(e) Section 856(i)(2) of the Internal Revenue Code, relating to qualified REIT subsidiary, is modified by substituting the phrase "is held by the real estate investment trust" for the phrase "is held by the real estate investment trust at all times during the period such corporation was in existence."

(f) (1) Section 856(j) of the Internal Revenue Code, relating to treatment of shared appreciation mortgages, is modified to additionally provide that for purposes of Section 857(b)(6)(C) of the Internal Revenue Code, if a real estate investment trust is treated as having sold secured property under Section 856(j)(3)(A) of the Internal Revenue Code, the trust shall be treated as having held the property for at least four years if all of the following apply:

(A) The secured property is sold or otherwise disposed of pursuant to a case under title 11 of the United States Code.

(B) The seller is under the jurisdiction of the court in that case.

(C) The disposition is required by the court or is pursuant to a plan approved by the court.

(2) Paragraph (1) shall not apply if either of the following applies:

(A) The secured property was acquired by the seller with the intent to evict or foreclose.

(B) The trust knew or had reason to know that default on the obligation described in Section 856(j)(4)(A) of the Internal Revenue Code would occur.

(g) Section 856(j)(4)(A)(ii) of the Internal Revenue Code is modified to read "which entitles the real estate investment trust to receive a specified portion of any gain realized on the sale or exchange of that real property (or of any gain which would be realized if the property were sold on a specified date) or appreciation in value as of any specified date."

(h) This section shall apply to income years beginning after August 5, 1997.

SEC. 38. Section 24872.5 is added to the Revenue and Taxation Code, to read:

24872.5. (a) Section 856(c)(4) of the Internal Revenue Code shall not apply.

(b) (1) Section 856(c)(6)(G) of the Internal Revenue Code shall not apply and in lieu thereof paragraph (2) shall apply.

(2) Except to the extent provided by regulations of the Secretary of the Treasury under Section 856(c)(5)(G) of the Internal Revenue Code (as redesignated and amended by Public Law 105-34), both of the following shall be treated as income qualifying under Section 856(c)(2) of the Internal Revenue Code:

(A) Any payment to a real estate investment trust under an interest rate swap or cap agreement, option, futures contract, forward rate agreement, or any similar financial instrument, entered into by the trust in a transaction to reduce the interest rate risks with respect to any indebtedness incurred or to be incurred by the trust to acquire or carry real estate assets.

(B) Any gain from the sale or other disposition of any such investment.

(c) This section shall apply in determining whether an entity qualifies as a real estate investment trust for income years of that entity beginning after August 5, 1997.

SEC. 39. Section 24872.7 is added to the Revenue and Taxation Code, to read:

24872.7. (a) (1) Section 857(a)(2) of the Internal Revenue Code shall not apply.

(2) Section 857 of the Internal Revenue Code is modified to additionally provide that each real estate investment trust shall for each income year comply with regulations prescribed by the Secretary of the Treasury under Section 857(f) of the Internal Revenue Code (as added by Section 1251 of Public Law 105-34) for the purposes of ascertaining the actual ownership of the outstanding shares, or certificates of beneficial interest, of that trust.

(3) (A) Whenever a penalty is imposed under Section 857(f)(2)(A) or (B) of the Internal Revenue Code (as added by Public Law 105-34), whichever is applicable, it shall be deemed that the real estate investment trust has failed to comply with the requirements of paragraph (2) for that income year and a penalty equal to the penalty determined under Section 857(f)(2)(A) or (B) of the Internal Revenue Code (as added by Public Law 105-34), whichever is applicable, shall be imposed and shall be paid on notice and demand and in the same manner as tax.

(B) No penalty shall be imposed under this paragraph if the Secretary of the Treasury, under Section 857(f)(2)(D) of the Internal Revenue Code (as added by Public Law 105-34), has determined that the failure to comply is due to reasonable cause and not to willful neglect.

(4) (A) Whenever a penalty is imposed under Section 857(f)(2)(C) of the Internal Revenue Code (as added by Public Law 105-34) it shall be deemed that the real estate investment trust has failed to comply with the requirements of paragraph (2) for that income year and an additional penalty equal to the penalty determined under Section 857(f)(2)(C) of the Internal Revenue

Code (as added by Public Law 105-34) shall be imposed and shall be paid on notice and demand and in the same manner as tax.

(B) No penalty shall be imposed under this paragraph if the Secretary of the Treasury, under Section 857(f)(2)(D) of the Internal Revenue Code (as added by Public Law 105-34), has determined that the failure to comply is due to reasonable cause and not to willful neglect.

(b) Section 857(b)(6)(C)(iii) of the Internal Revenue Code is modified by substituting the phrase "(other than sales of foreclosure property or sales to which Section 1033 of the Internal Revenue Code applies)" for the phrase "(other than foreclosure property)" in each place in which it appears.

(c) Section 857(d) of the Internal Revenue Code is modified to additionally provide that any distribution which is made in order to comply with the requirements of Section 857(a)(3)(B) of the Internal Revenue Code:

(1) Shall be treated for purposes of Section 857(d) of the Internal Revenue Code and Section 857(a)(3)(B) of the Internal Revenue Code as made from the earliest accumulated earnings and profits (other than earnings and profits to which Section 857(a)(3)(A) of the Internal Revenue Code applies) rather than the most recently accumulated earnings and profits.

(2) To the extent treated under paragraph (1) as made from accumulated earnings and profits, shall not be treated as a distribution for purposes of Section 857(b)(2)(B) of the Internal Revenue Code.

(d) (1) Section 857(e)(2)(B) of the Internal Revenue Code shall not apply.

(2) Section 857(e)(2) of the Internal Revenue Code is modified to additionally provide that the amount determined under that paragraph shall include the amount (if any) by which the amounts includible in gross income with respect to instruments to which Section 860E(a) or 1272 of the Internal Revenue Code applies, exceed the amount of money and the fair market value of other property received during the income year under those instruments.

(3) Section 857(e)(2) of the Internal Revenue Code is modified to additionally provide that the amount determined under that paragraph shall include amounts includible in income by reason of cancellation of indebtedness.

(e) This section shall apply to income years beginning after August 5, 1997.

SEC. 40. Section 24875.5 is added to the Revenue and Taxation Code, to read:

24875.5. (a) Section 860L(b)(1)(A) of the Internal Revenue Code is modified by substituting the phrase "on or after the startup date" for the phrase "after the startup date."

(b) Section 860L(d)(2) of the Internal Revenue Code is modified by substituting a reference to Section 860I(b)(2) of the Internal

Revenue Code in lieu of the reference to Section 860I(c)(2) of the Internal Revenue Code.

(c) This section shall apply on and after September 1, 1997.

SEC. 41. Section 24918 of the Revenue and Taxation Code is amended to read:

24918. (a) 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.

(b) The amendments to Section 1017 of the Internal Revenue Code made by Section 13150 of the Revenue and Reconciliation Act of 1993 (Public Law 103-66), relating to modifications of discharge of indebtedness provisions, shall apply to discharges occurring on or after January 1, 1996, in income years beginning on or after January 1, 1996.

SEC. 42. Section 24949.1 is added to the Revenue and Taxation Code, to read:

24949.1. (a) Section 1033(e) of the Internal Revenue Code, relating to livestock sold on account of drought, is modified by substituting the phrase "on account of drought, flood, or other weather-related conditions" in lieu of the phrase "on account of drought" contained therein.

(b) This section shall apply to sales and exchanges after December 31, 1996.

SEC. 43. Section 24954 of the Revenue and Taxation Code, as added by Section 20 of Chapter 610 of the Statutes of 1997, is repealed.

SEC. 44. Section 110 of Chapter 605 of the Statutes of 1997 is amended to read:

Sec. 110. The Legislature finds and declares all of the following:

(a) Except as otherwise provided in subdivision (b), Section 112 or Section 114 of this act, the amendments to Sections 18402, 18604, 18606, 18621.5, 18637, 18638, 18662, 18670, 19009, 19011, 19023, 19024, 19058, 19132.5, 19141.5, 19141.6, 19147, 19164, 19192, 19254, 19263, 19301, 19392, 19411, 19542, 19563, 19701, 19705, 19706, 19719, 23037, 23038, 23040.1, 23095, 23098, 23151, 23151.1, 23151.2, 23153, 23303, 23305.2, 23334, 23455, 23501, 23610.5, 23612.6, 23623.5, 23625, 23645, 23646, 23731, 24346, 24356.4, 24356.8, 24357, 24358, 24359, 24402, 24407, 24408, 24409, 24411, 24416, 24416.2, 24677, 24678, 24901, 24912, 24916, 24917, 24942, 25105, 25110, 25111, 25112, and 25128 of the Revenue and Taxation Code are consistent with the intent of the acts enacting those sections, and as such shall apply from the original effective dates of those acts.

(b) The amendments to Sections 17052.15, 17053.45, 17053.46, 23612.6, 23645, and 23646 of the Revenue and Taxation Code made by this act that relate to the election of the credit to be claimed are

consistent with the intent of the Los Angeles Revitalization Zone Act and the Local Military Base Recovery Area Act, and as such shall apply from the original effective dates of those acts.

(c) This act repeals Sections 23184, 23184.5, 23185, 23185a, and 23185b of the Revenue and Taxation Code which have been obsolete since January 1, 1981, when the provisions of Chapter 1150 of the Statutes of 1979 took effect, providing financial corporations with the same taxation treatment as banks, thereby prohibiting the imposition of personal property taxes or business license taxes on financial corporations by local jurisdictions. The repeal made by this act shall not affect any act done or any right accruing or accrued, or any suit, appeal, or other proceeding that commenced under Section 23184, 23184.5, 23185, 23185a, or 23185b of the Revenue and Taxation Code before that repeal.

SEC. 45. Section 112 of Chapter 605 of the Statutes of 1997 is amended to read:

Sec. 112. For purposes of the definition of "qualifying dividends" in subdivision (a) of Section 24411 of the Revenue and Taxation Code, the term "corporation" shall include banks only for income years beginning on or after January 1, 1998.

SEC. 46. Section 19 is added to Chapter 609 of the Statutes of 1997, to read:

Sec. 19. Sections 3, 6, 8, and 10 of this act shall become operative on January 1, 1997.

SEC. 47. Section 30 of Chapter 611 of the Statutes of 1997 is amended to read:

Sec. 30. Section 17267 of the Revenue and Taxation Code as enacted by Chapter 954 of the Statutes of 1996 is repealed.

SEC. 48. The Legislature finds and declares that the amendments to Sections 17053.47 and 23622.8 of the Revenue and Taxation Code by this act are consistent with the intent of the act enacting those sections, and shall apply from the original effective dates of that act.

SEC. 49. Except for paragraph (1) of subdivision (c) of Section 17062, the amendments to Section 17062 of the Revenue and Taxation Code made by this act shall apply to taxable years beginning on or after January 1, 1998. Paragraph (1) of subdivision (c) of Section 17062 shall apply to taxable years beginning on or after January 1, 1997.

SEC. 50. The amendments to Sections 19023, 19024, 19025, 19136.3, 19147, 19149, 23456, and 23800.5, as added by Section 72 of Chapter 611 of the Statutes of 1997, of the Revenue and Taxation Code made by this act shall apply to taxable or income years beginning on or after January 1, 1997.

SEC. 51. The repeal of Section 17731.5, as added by Section 3 of Chapter 610 of the Statutes of 1997, Section 19365, as added by Section 9 of Chapter 610 of the Statutes of 1997, Section 23800.5, as added by Section 11 of Chapter 610 of the Statutes of 1997, Section 23813, as added by Section 18 of Chapter 610 of the Statutes of 1997, and Section

24954, as added by Section 20 of Chapter 610 of the Statutes of 1997, of the Revenue and Taxation Code by this act shall be operative on January 1, 1997.

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 8

An act to add Sections 2541.1 and 2559.6 to the Business and Professions Code, relating to healing arts.

[Approved by Governor March 16, 1998. Filed with Secretary of State March 17, 1998.]

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

SECTION 1. Section 2541.1 is added to the Business and Professions Code, to read:

2541.1. (a) A spectacle lens prescription shall include all of the following:

(1) The dioptric power of the lens. When the prescription needed by the patient has not changed since the previous examination, the prescriber may write on the prescription form "copy lenses currently worn" instead.

(2) The expiration date of the prescription.

(3) The date of the issuance of the prescription.

(4) The name, address, telephone number, prescriber's license number, and signature of the prescribing optometrist or physician and surgeon.

(5) The name of the person to whom the prescription is issued.

(b) The expiration date of a spectacle lens prescription shall not be less than two to four years from the date of issuance unless the patient's history or current circumstances establish a reasonable probability of changes in the patient's vision of sufficient magnitude to necessitate reexamination earlier than two years, or presence or probability of visual abnormalities related to ocular or systemic disease indicates, the need for reexamination of the patient earlier than two years. In no circumstances shall the expiration date be shorter than the period of time recommended by the prescriber for reexamination of the patient. Establishing an expiration date that is not consistent with this section shall be regarded as unprofessional conduct by the board that issued the prescriber's certificate to practice.

(c) The prescriber of a spectacle lens shall orally inform the patient of the expiration date of a spectacle lens prescription at the time the prescription is issued. The expiration date of a prescription may be extended by the prescriber and transmitted by telephone,

electronic mail, or any other means of communication. An oral prescription for a spectacle lens shall be reduced to writing and a copy of that writing shall be sent to the prescriber prior to the delivery of the lenses to the person to whom the prescription is issued.

(d) A prescriber of a spectacle lens shall abide by the rules pertaining to spectacle lens prescriptions and eye examinations adopted by the Federal Trade Commission found in Part 456 of Title 16 of the Code of Federal Regulations.

(e) An expired prescription may be filled if all of the following conditions exist:

(1) The patient's spectacles are lost, broken, or damaged to a degree that renders them unusable.

(2) Upon dispensing a prescription pursuant to this subdivision, the person dispensing shall recommend that the patient return to the optometrist or physician and surgeon who issued the prescription for an eye examination and provide the prescriber with a written notification of the prescription that was filled.

SEC. 2. Section 2559.6 is added to the Business and Professions Code, to read:

2559.6. No spectacle lens prescription that is issued on or after January 1, 1999, shall be dispensed unless the prescription meets the requirements of Section 2541.1. No spectacle lens prescription shall be dispensed after the expiration date of the prescription unless authorized pursuant to subdivision (e) of Section 2541.1. A person violating this section shall not be guilty of a misdemeanor pursuant to Section 2558. A violation of this section shall be considered unprofessional conduct by the board that issued the dispenser's certificate to practice. A registered dispensing optician may defend this proceeding by establishing that the expiration date of the prescription was not established consistent with Section 2541.1. Nothing in this section shall be construed to authorize a registered dispensing optician to fill a prescription after the expiration date or to make any judgment regarding the appropriateness of the expiration date.

CHAPTER 9

An act to amend Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor March 25, 1998. Filed with Secretary of State March 26, 1998.]

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

SECTION 1. Section 12206 of the Revenue and Taxation Code is amended to read:

12206. (a) (1) There shall be allowed as a credit against the "tax" (as defined by Section 12201) a state low-income housing tax credit in an amount equal to the amount determined in subdivision (c), computed in accordance with Section 42 of the Internal Revenue Code, except as otherwise provided in this section.

(2) "Taxpayer," for purposes of this section, means the sole owner in the case of a C corporation, the partners in the case of a partnership, and the shareholders in the case of an S corporation.

(3) "Housing sponsor," for purposes of this section, means the sole owner in the case of a C corporation, the partnership in the case of a partnership, and the S corporation in the case of an S corporation.

(b) (1) The amount of the credit allocated to any housing sponsor shall be authorized by the California Tax Credit Allocation Committee, or any successor thereof, based on a project's need for the credit for economic feasibility in accordance with the requirements of this section.

(A) The low-income housing project shall be located in California and shall meet either of the following requirements:

(i) The project's housing sponsor shall have been allocated by the California Tax Credit Allocation Committee a credit for federal income tax purposes under Section 42 of the Internal Revenue Code.

(ii) It shall qualify for a credit under Section 42(h)(4)(B) of the Internal Revenue Code.

(B) The California Tax Credit Allocation Committee shall not require fees for the credit under this section in addition to those fees required for applications for the tax credit pursuant to Section 42 of the Internal Revenue Code. The committee may require a fee if the application for the credit under this section is submitted in a calendar year after the year the application is submitted for the federal tax credit.

(2) (A) The California Tax Credit Allocation Committee shall certify to the housing sponsor the amount of tax credit under this section allocated to the housing sponsor for each credit period.

(B) In the case of a partnership or an S corporation, the housing sponsor shall provide a copy of the California Tax Credit Allocation Committee certification to the taxpayer.

(C) The taxpayer shall attach a copy of the certification to any return upon which a tax credit is claimed under this section.

(D) In the case of a failure to attach a copy of the certification for the year to the return in which a tax credit is claimed under this section, no credit under this section shall be allowed for that year until a copy of that certification is provided.

(E) All elections made by the taxpayer pursuant to Section 42 of the Internal Revenue Code shall apply to this section.

(F) No credit shall be allocated under this section to buildings located in a difficult development area or a qualified census tract as defined in Section 42 of the Internal Revenue Code for which the eligible basis of a new building or the rehabilitation expenditure of an existing building is 130 percent of that amount pursuant to Section 42(d)(5)(C) of the Internal Revenue Code, unless the committee reduces the amount of federal credit, with the approval of the applicant, so that the combined amount of federal and state credit shall not exceed the total credit allowable pursuant to this section and Section 42(b) of the Internal Revenue Code, computed without regard to Section 42(d)(5)(C) of the Internal Revenue Code.

(c) Section 42(b) of the Internal Revenue Code shall be modified as follows:

(1) In the case of any qualified low-income building that receives an allocation after 1989 and is a new building not federally subsidized, the term "applicable percentage" means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings that are not federally subsidized for the taxable year, determined in accordance with the requirements of Section 42(b)(2) of the Internal Revenue Code, in lieu of the percentage prescribed in Section 42(b)(1)(A) of the Internal Revenue Code.

(B) For the fourth year, the difference between 30 percent and the sum of the applicable percentages for the first three years.

(2) In the case of any qualified low-income building that receives an allocation after 1989 and that is a new building that is federally subsidized or that is an existing building that is "at risk of conversion," the term "applicable percentage" means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings that are federally subsidized for the taxable year.

(B) For the fourth year, the difference between 13 percent and the sum of the applicable percentages for the first three years.

(3) For purposes of this section, the term "at risk of conversion," with respect to an existing building means a building that satisfies all of the following criteria:

(A) The building is presently owned by a housing sponsor other than a qualified nonprofit organization.

(B) The building is a federally assisted building for which the low-income use restrictions will terminate or the mortgage on the building is eligible for incentives under Subtitle 13 of the Emergency Low Income Housing Assistance Act of 1987 or under Section 502(c) of the Housing Act of 1949, anytime in the two calendar years after the year of application to the California Tax Credit Allocation Committee, and the purchaser has received preliminary approval from the applicable federal agency for a maximum level of incentives through a plan of action.

(C) The person acquiring the building enters into a regulatory agreement that requires the building to be operated in accordance with the requirements of this section for a period equal to the greater of 55 years or the life of the building.

(D) The building satisfies the requirements of Section 42(e) of the Internal Revenue Code regarding rehabilitation expenditures, except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not apply.

(d) The term "qualified low-income housing project" as defined in Section 42(c)(2) of the Internal Revenue Code is modified by adding the following requirements:

(1) The taxpayer shall be entitled to receive a cash distribution from the operations of the project, after funding required reserves, which, at the election of the taxpayer, is equal to:

(A) An amount not to exceed 8 percent of the lesser of:

(i) The owner equity which shall include the amount of the capital contributions actually paid to the housing sponsor and shall not include any amounts until they are paid on an investor note; or

(ii) Twenty percent of the adjusted basis of the building as of the close of the first income year of the credit period; or

(B) The amount of the cash-flow from those units in the building that are not low-income units. For purposes of computing cash-flow under this subparagraph, operating costs shall be allocated to the low-income units using the "floor space fraction," as defined in Section 42 of the Internal Revenue Code.

(C) Any amount allowed to be distributed under subparagraph (A) that is not available for distribution during the first five years of the compliance period may accumulate and be distributed any time during the first 15 years of the compliance period but not thereafter.

(2) The limitation on return shall apply in the aggregate to the partners if the housing sponsor is a partnership and in the aggregate to the shareholders if the housing sponsor is an S corporation.

(3) The housing sponsor shall apply any cash available for distribution in excess of the amount eligible to be distributed under paragraph (1) to reduce the rent on rent-restricted units or to increase the number of rent-restricted units subject to the tests of Section 42(g)(1) of the Internal Revenue Code.

(e) The provisions of Section 42(f) of the Internal Revenue Code shall be modified as follows:

(1) The term "credit period" as defined in Section 42(f)(1) of the Internal Revenue Code is modified by substituting "four income years" for "10 taxable years."

(2) The special rule for the first taxable year of the credit period under Section 42(f)(2) of the Internal Revenue Code shall not apply to the tax credit under this section.

(3) Section 42(f)(3) of the Internal Revenue Code is modified to read:

If, as of the close of any income year in the compliance period, after the first year of the credit period, the qualified basis of any building exceeds the qualified basis of that building as of the close of the first year of the credit period, the housing sponsor, to the extent of its tax credit allocation, shall be eligible for a credit on the excess in an amount equal to the applicable percentage determined pursuant to subdivision (c) for the four-year period beginning with the later of the income years in which the increase in qualified basis occurs.

(f) The provisions of Section 42(h) of the Internal Revenue Code shall be modified as follows:

(1) Section 42(h)(2) of the Internal Revenue Code shall not be applicable and instead the following provisions shall be applicable:

The total amount for the four-year credit period of the housing credit dollars allocated in a calendar year to any building shall reduce the aggregate housing credit dollar amount of the California Tax Credit Allocation Committee for the calendar year in which the allocation is made.

(2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I), (7), and (8) of Section 42(h) of the Internal Revenue Code shall not be applicable.

(g) The aggregate housing credit dollar amount that may be allocated annually by the California Tax Credit Allocation Committee pursuant to this section, Section 17058, and Section 23610.5 shall be an amount equal to the sum of the following:

(1) (A) Except as provided in subparagraph (B), thirty-five million dollars ($35,000,000) for the 1997 calendar year, and each calendar year thereafter.

(B) Fifty million dollars ($50,000,000) for each of the calendar years 1998 and 1999.

(2) The unused housing credit ceiling, if any, for the preceding calendar years.

(3) The amount of housing credit ceiling returned in the calendar year. For purposes of this paragraph, the amount of housing credit dollar amount returned in the calendar year equals the housing credit dollar amount previously allocated to any project that does not become a qualified low-income housing project within the period required by this section or to any project with respect to which an allocation is canceled by mutual consent of the California Tax Credit Allocation Committee and the allocation recipient.

(h) The term "compliance period" as defined in Section 42(i)(1) of the Internal Revenue Code is modified to mean, with respect to any building, the period of 30-consecutive income years beginning with the first income year of the credit period with respect thereto.

(i) (1) Section 42(j) of the Internal Revenue Code shall not be applicable and the provisions in paragraph (2) shall be substituted in its place.

(2) The requirements of this section shall be set forth in a regulatory agreement between the California Tax Credit Allocation

Committee and the housing sponsor, which agreement shall be subordinated, when required, to any lien or encumbrance of any banks or other institutional lenders to the project. The regulatory agreement entered into pursuant to subdivision (f) of Section 50199.14 of the Health and Safety Code, shall apply, providing the agreement includes all of the following provisions:

(A) A term not less than the compliance period.

(B) A requirement that the agreement be filed in the official records of the county in which the qualified low-income housing project is located.

(C) A provision stating which state and local agencies can enforce the regulatory agreement in the event the housing sponsor fails to satisfy any of the requirements of this section.

(D) A provision that the regulatory agreement shall be deemed a contract enforceable by tenants as third-party beneficiaries thereto and which allows individuals, whether prospective, present, or former occupants of the building, who meet the income limitation applicable to the building, the right to enforce the regulatory agreement in any state court.

(E) A provision incorporating the requirements of Section 42 of the Internal Revenue Code as modified by this section.

(F) A requirement that the housing sponsor notify the California Tax Credit Allocation Committee or its designee and the local agency that can enforce the regulatory agreement if there is a determination by the Internal Revenue Service that the project is not in compliance with Section 42(g) of the Internal Revenue Code.

(G) A requirement that the housing sponsor, as security for the performance of the housing sponsor's obligations under the regulatory agreement, assign the housing sponsor's interest in rents that it receives from the project, provided that until there is a default under the regulatory agreement, the housing sponsor is entitled to collect and retain the rents.

(H) The remedies available in the event of a default under the regulatory agreement that is not cured within a reasonable cure period, include, but are not limited to, allowing any of the parties designated to enforce the regulatory agreement to collect all rents with respect to the project; taking possession of the project and operating the project in accordance with the regulatory agreement until the enforcer determines the housing sponsor is in a position to operate the project in accordance with the regulatory agreement; applying to any court for specific performance; securing the appointment of a receiver to operate the project; or any other relief as may be appropriate.

(j) (1) The committee shall allocate the housing credit on a regular basis consisting of two or more periods in each calendar year during which applications may be filed and considered. The committee shall establish application filing deadlines, the maximum percentage of federal and state low-income housing tax credit ceiling

which may be allocated by the committee in that period, and the approximate date on which allocations shall be made. If the enactment of federal or state law, the adoption of rules or regulations, or other similar events prevent the use of two allocation periods, the committee may reduce the number of periods and adjust the filing deadlines, maximum percentage of credit allocated, and the allocation dates.

(2) The committee shall adopt a qualified allocation plan, as provided in Section 42(m)(1) of the Internal Revenue Code. In adopting this plan, the committee shall comply with the provisions of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue Code.

(3) Notwithstanding Section 42(m) of the Internal Revenue Code, the California Tax Credit Allocation Committee shall allocate housing credits in accordance with the qualified allocation plan and regulations, which shall include the following provisions:

(A) All housing sponsors, as defined by paragraph (3) of subdivision (a), shall demonstrate at the time the application is filed with the committee that the project meets the following threshold requirements:

(i) The housing sponsor shall demonstrate there is a need and demand for low-income housing in the community or region for which it is proposed.

(ii) The project's proposed financing, including tax credit proceeds, shall be sufficient to complete the project and that the proposed operating income shall be adequate to operate the project for the extended use period.

(iii) The project shall have enforceable financing commitments, either construction or permanent financing, for at least 50 percent of the total estimated financing of the project.

(iv) The housing sponsor shall have and maintain control of the site for the project.

(v) The housing sponsor shall demonstrate that the project complies with all applicable local land use and zoning ordinances.

(vi) The housing sponsor shall demonstrate that the project development team has the experience and the financial capacity to ensure project completion and operation for the extended use period.

(vii) The housing sponsor shall demonstrate the amount of tax credit that is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the extended use period, taking into account operating expenses, a supportable debt service, reserves, funds set aside for rental subsidies, and required equity, and a development fee that does not exceed a specified percentage of the eligible basis of the project prior to inclusion of the development fee in the eligible basis, as determined by the committee.

(B) The committee shall give a preference to those projects satisfying all of the threshold requirements of subparagraph (A) if:

(i) The project serves the lowest income tenants at rents affordable to those tenants; and

(ii) The project is obligated to serve qualified tenants for the longest period.

(C) In addition to the provisions of subparagraphs (A) and (B), the committee shall use the following criteria in allocating housing credits:

(i) Projects serving large families in which a substantial number, as defined by the committee, of all residential units is comprised of low-income units with three and more bedrooms.

(ii) Projects providing single room occupancy units serving very low income tenants.

(iii) Existing projects that are "at risk of conversion," as defined by paragraph (4) of subdivision (c).

(iv) Projects for which a public agency provides direct or indirect long-term financial support for at least 15 percent of the total project development costs or projects for which the owner's equity constitutes at least 30 percent of the total project development costs.

(v) Projects that provide tenant amenities not generally available to residents of low-income housing projects.

(4) For purposes of allocating credits pursuant to this section, the committee shall not give preference to any project by virtue of the date of submission of its application except to break a tie when two or more of the projects have an equal rating.

(k) Section 42(*l*) of the Internal Revenue Code shall be modified as follows:

The term "secretary" shall be replaced by the term "California Franchise Tax Board."

(*l*) In the case where the state credit allowed under this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(m) The provisions of Section 11407(a) of Public Law 101-508, relating to the effective date of the extension of the low-income housing credit, shall apply to calendar years after 1993.

(n) The provisions of Section 11407(c) of Public Law 101-508, relating to election to accelerate credit, shall not apply.

(o) This section shall remain in effect for as long as Section 42 of the Internal Revenue Code, relating to low-income housing credits, remains in effect.

SEC. 2. Section 17058 of the Revenue and Taxation Code is amended to read:

17058. (a) (1) There shall be allowed as a credit against the amount of net tax (as defined in Section 17039) a state low-income housing credit in an amount equal to the amount determined in subdivision (c), computed in accordance with the provisions of

Section 42 of the Internal Revenue Code, except as otherwise provided in this section.

(2) "Taxpayer" for purposes of this section means the sole owner in the case of an individual, the partners in the case of a partnership, and the shareholders in the case of an S corporation.

(3) "Housing sponsor" for purposes of this section means the sole owner in the case of an individual, the partnership in the case of a partnership, and the S corporation in the case of an S corporation.

(b) (1) The amount of the credit allocated to any housing sponsor shall be authorized by the California Tax Credit Allocation Committee, or any successor thereof, based on a project's need for the credit for economic feasibility in accordance with the requirements of this section.

(A) The low-income housing project shall be located in California and shall meet either of the following requirements:

(i) The project's housing sponsor shall have been allocated by the California Tax Credit Allocation Committee a credit for federal income tax purposes under Section 42 of the Internal Revenue Code.

(ii) It shall qualify for a credit under Section 42(h)(4)(B) of the Internal Revenue Code.

(B) The California Tax Credit Allocation Committee shall not require fees for the credit under this section in addition to those fees required for applications for the tax credit pursuant to Section 42 of the Internal Revenue Code. The committee may require a fee if the application for the credit under this section is submitted in a calendar year after the year the application is submitted for the federal tax credit.

(2) (A) The California Tax Credit Allocation Committee shall certify to the housing sponsor the amount of tax credit under this section allocated to the housing sponsor for each credit period.

(B) In the case of a partnership or an S corporation, the housing sponsor shall provide a copy of the California Tax Credit Allocation Committee certification to the taxpayer.

(C) The taxpayer shall, upon request, provide a copy of the certification to the Franchise Tax Board.

(D) All elections made by the taxpayer pursuant to Section 42 of the Internal Revenue Code shall apply to this section.

(E) For buildings located in designated difficult development areas or qualified census tracts as defined in Section 42(d)(5)(C) of the Internal Revenue Code, credits may be allocated under this section in the amounts prescribed in subdivision (c), provided that the amount of credit allocated under Section 42 of the Internal Revenue Code is computed on 100 percent of the qualified basis of the building.

(c) Section 42(b) of the Internal Revenue Code shall be modified as follows:

(1) In the case of any qualified low-income building placed in service by the housing sponsor during 1987, the term "applicable

percentage" means 9 percent for each of the first three years and 3 percent for the fourth year for new buildings (whether or not the building is federally subsidized) and for existing buildings.

(2) In the case of any qualified low-income building that receives an allocation after 1989 and is a new building not federally subsidized, the term "applicable percentage" means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings that are not federally subsidized for the taxable year, determined in accordance with the requirements of Section 42(b)(2) of the Internal Revenue Code, in lieu of the percentage prescribed in Section 42(b)(1)(A) of the Internal Revenue Code.

(B) For the fourth year, the difference between 30 percent and the sum of the applicable percentages for the first three years.

(3) In the case of any qualified low-income building that receives an allocation after 1989 and that is a new building that is federally subsidized or that is an existing building that is "at risk of conversion," the term "applicable percentage" means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings that are federally subsidized for the taxable year.

(B) For the fourth year, the difference between 13 percent and the sum of the applicable percentages for the first three years.

(4) For purposes of this section, the term "at risk of conversion," with respect to an existing building means a building that satisfies all of the following criteria:

(A) The building is presently owned by a housing sponsor other than a qualified nonprofit organization.

(B) The building is a federally assisted building for which the low-income use restrictions will terminate or the building is eligible for incentives under Subtitle 13 of the Emergency Low Income Housing Preservation Act of 1987 or under Section 502(c) of the Housing Act of 1949, anytime in the two calendar years after the year of application to the California Tax Credit Allocation Committee, and the purchaser has received preliminary approval from the applicable federal agency for a maximum level of incentives through a plan of action.

(C) The person acquiring the building enters into a regulatory agreement that requires the building to be operated in accordance with the requirements of this section for a period equal to the greater of 55 years or the life of the building.

(D) The building satisfies the requirements of Section 42(e) of the Internal Revenue Code regarding rehabilitation expenditures, except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not apply.

(d) The term "qualified low-income housing project" as defined in Section 42(c)(2) of the Internal Revenue Code is modified by adding the following requirements:

(1) The taxpayer shall be entitled to receive a cash distribution from the operations of the project, after funding required reserves, that, at the election of the taxpayer, is equal to:

(A) An amount not to exceed 8 percent of the lesser of:

(i) The owner equity that shall include the amount of the capital contributions actually paid to the housing sponsor and shall not include any amounts until they are paid on an investor note; or

(ii) Twenty percent of the adjusted basis of the building as of the close of the first taxable year of the credit period; or

(B) The amount of the cash-flow from those units in the building that are not low-income units. For purposes of computing cash-flow under this subparagraph, operating costs shall be allocated to the low-income units using the "floor space fraction," as defined in Section 42 of the Internal Revenue Code.

(C) Any amount allowed to be distributed under subparagraph (A) that is not available for distribution during the first five years of the compliance period may be accumulated and distributed any time during the first 15 years of the compliance period but not thereafter.

(2) The limitation on return shall apply in the aggregate to the partners if the housing sponsor is a partnership and in the aggregate to the shareholders if the housing sponsor is an S corporation.

(3) The housing sponsor shall apply any cash available for distribution in excess of the amount eligible to be distributed under paragraph (1) to reduce the rent on rent-restricted units or to increase the number of rent-restricted units subject to the tests of Section 42(g)(1) of the Internal Revenue Code.

(e) The provisions of Section 42(f) of the Internal Revenue Code shall be modified as follows:

(1) The term "credit period" as defined in Section 42(f)(1) of the Internal Revenue Code is modified by substituting "four taxable years" for "10 taxable years."

(2) The special rule for the first taxable year of the credit period under Section 42(f)(2) of the Internal Revenue Code shall not apply to the tax credit under this section.

(3) Section 42(f)(3) of the Internal Revenue Code is modified to read:

If, as of the close of any taxable year in the compliance period, after the first year of the credit period, the qualified basis of any building exceeds the qualified basis of that building as of the close of the first year of the credit period, the housing sponsor, to the extent of its tax credit allocation, shall be eligible for a credit on the excess in an amount equal to the applicable percentage determined pursuant to subdivision (c) for the four-year period beginning with the taxable year in which the increase in qualified basis occurs.

(f) The provisions of Section 42(h) of the Internal Revenue Code shall be modified as follows:

(1) Section 42(h)(2) of the Internal Revenue Code shall not be applicable and instead the following provisions shall be applicable:

The total amount for the four-year period of the housing credit dollars allocated in a calendar year to any building shall reduce the aggregate housing credit dollar amount of the California Tax Credit Allocation Committee for the calendar year in which the allocation is made.

(2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I), (7), and (8) of Section 42(h) of the Internal Revenue Code shall not be applicable to this section.

(g) The aggregate housing credit dollar amount which may be allocated annually by the California Tax Credit Allocation Committee pursuant to this section, Section 12206, and Section 23610.5 shall be an amount equal to the sum of the following:

(1) (A) Except as provided in subparagraph (B), thirty-five million dollars ($35,000,000) for the 1997 calendar year, and each calendar year thereafter.

(B) Fifty million dollars ($50,000,000) for each of the calendar years 1998 and 1999.

(2) The unused housing credit ceiling, if any, for the preceding calendar years.

(3) The amount of housing credit ceiling returned in the calendar year. For purposes of this paragraph, the amount of housing credit dollar amount returned in the calendar year equals the housing credit dollar amount previously allocated to any project that does not become a qualified low-income housing project within the period required by this section or to any project with respect to which an allocation is canceled by mutual consent of the California Tax Credit Allocation Committee and the allocation recipient.

(h) The term "compliance period" as defined in Section 42(i)(1) of the Internal Revenue Code is modified to mean, with respect to any building, the period of 30 consecutive taxable years beginning with the first taxable year of the credit period with respect thereto.

(i) Section 42(j) of the Internal Revenue Code shall not be applicable and the following requirements of this section shall be set forth in a regulatory agreement between the California Tax Credit Allocation Committee and the housing sponsor, which agreement shall be subordinated, when required, to any lien or encumbrance of any banks or other institutional lenders to the project. The regulatory agreement entered into pursuant to subdivision (f) of Section 50199.14 of the Health and Safety Code shall apply, providing the agreement includes all of the following provisions:

(1) A term not less than the compliance period.

(2) A requirement that the agreement be filed in the official records of the county in which the qualified low-income housing project is located.

(3) A provision stating which state and local agencies can enforce the regulatory agreement in the event the housing sponsor fails to satisfy any of the requirements of this section.

(4) A provision that the regulatory agreement shall be deemed a contract enforceable by tenants as third-party beneficiaries thereto and which allows individuals, whether prospective, present, or former occupants of the building, who meet the income limitation applicable to the building, the right to enforce the regulatory agreement in any state court.

(5) A provision incorporating the requirements of Section 42 of the Internal Revenue Code as modified by this section.

(6) A requirement that the housing sponsor notify the California Tax Credit Allocation Committee or its designee if there is a determination by the Internal Revenue Service that the project is not in compliance with Section 42(g) of the Internal Revenue Code.

(7) A requirement that the housing sponsor, as security for the performance of the housing sponsor's obligations under the regulatory agreement, assign the housing sponsor's interest in rents that it receives from the project, provided that until there is a default under the regulatory agreement, the housing sponsor is entitled to collect and retain the rents.

(8) The remedies available in the event of a default under the regulatory agreement that is not cured within a reasonable cure period, include, but are not limited to, allowing any of the parties designated to enforce the regulatory agreement to collect all rents with respect to the project; taking possession of the project and operating the project in accordance with the regulatory agreement until the enforcer determines the housing sponsor is in a position to operate the project in accordance with the regulatory agreement; applying to any court for specific performance; securing the appointment of a receiver to operate the project; or any other relief as may be appropriate.

(j) (1) The committee shall allocate the housing credit on a regular basis consisting of two or more periods in each calendar year during which applications may be filed and considered. The committee shall establish application filing deadlines, the maximum percentage of federal and state low-income housing tax credit ceiling that may be allocated by the committee in that period, and the approximate date on which allocations shall be made. If the enactment of federal or state law, the adoption of rules or regulations or other similar events prevent the use of two allocation periods, the committee may reduce the number of periods and adjust the filing deadlines, maximum percentage of credit allocated, and the allocation dates.

(2) The committee shall adopt a qualified allocation plan, as provided in Section 42(m)(1) of the Internal Revenue Code. In adopting this plan, the committee shall comply with the provisions of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue Code.

(3) Notwithstanding Section 42(m) of the Internal Revenue Code, the California Tax Credit Allocation Committee shall allocate

housing credits in accordance with the qualified allocation plan and regulations, which shall include the following provisions:

(A) All housing sponsors, as defined by paragraph (3) of subdivision (a), shall demonstrate at the time the application is filed with the committee that the project meets the following threshold requirements:

(i) The housing sponsor shall demonstrate there is a need and demand for low-income housing in the community or region for which it is proposed.

(ii) The project's proposed financing, including tax credit proceeds, shall be sufficient to complete the project and that the proposed operating income shall be adequate to operate the project for the extended use period.

(iii) The project shall have enforceable financing commitments, either construction or permanent financing, for at least 50 percent of the total estimated financing of the project.

(iv) The housing sponsor shall have and maintain control of the site for the project.

(v) The housing sponsor shall demonstrate that the project complies with all applicable local land use and zoning ordinances.

(vi) The housing sponsor shall demonstrate that the project development team has the experience and the financial capacity to ensure project completion and operation for the extended use period.

(vii) The housing sponsor shall demonstrate the amount of tax credit that is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the extended use period, taking into account operating expenses, a supportable debt service, reserves, funds set aside for rental subsidies, and required equity, and a development fee that does not exceed a specified percentage of the eligible basis of the project prior to inclusion of the development fee in the eligible basis, as determined by the committee.

(B) The committee shall give a preference to those projects satisfying all of the threshold requirements of subparagraph (A) if:

(i) The project serves the lowest income tenants at rents affordable to those tenants; and

(ii) The project is obligated to serve qualified tenants for the longest period.

(C) In addition to the provisions of subparagraphs (A) and (B), the committee shall use the following criteria in allocating housing credits:

(i) Projects serving large families in which a substantial number, as defined by the committee of all residential units is comprised of low-income units with three and more bedrooms.

(ii) Projects providing single room occupancy units serving very low income tenants.

(iii) Existing projects that are "at risk of conversion," as defined by paragraph (4) of subdivision (c).

(iv) Projects for which a public agency provides direct or indirect long-term financial support for at least 15 percent of the total project development costs or projects for which the owner's equity constitutes at least 30 percent of the total project development costs.

(v) Projects that provide tenant amenities not generally available to residents of low-income housing projects.

(4) For purposes of allocating credits pursuant to this section, the committee shall not give preference to any project by virtue of the date of submission of its application.

(k) Section 42(*l*) of the Internal Revenue Code shall be modified as follows:

The term "secretary" shall be replaced by the term "California Franchise Tax Board."

(*l*) In the case where the credit allowed under this section exceeds the net tax, the excess credit may be carried over to reduce the net tax in the following year, and succeeding taxable years, if necessary, until the credit has been exhausted.

(m) A project that received an allocation of a 1989 federal housing credit dollar amount shall be eligible to receive an allocation of a 1990 state housing credit dollar amount, subject to all of the following conditions:

(1) The project was not placed in service prior to 1990.

(2) To the extent the amendments made to this section by the Statutes of 1990 conflict with any provisions existing in this section prior to those amendments, the prior provisions of law shall prevail.

(3) Notwithstanding paragraph (2), a project applying for an allocation under this subdivision shall be subject to the requirements of paragraph (3) of subdivision (j).

(n) The credit period with respect to an allocation of credit in 1989 by the California Tax Credit Allocation Committee of which any amount is attributable to unallocated credit from 1987 or 1988 shall not begin until after December 31, 1989.

(o) The provisions of Section 11407(a) of Public Law 101-508, relating to the effective date of the extension of the low-income housing credit, shall apply to calendar years after 1989.

(p) The provisions of Section 11407(c) of Public Law 101-508, relating to election to accelerate credit, shall not apply.

(q) Any unused credit may continue to be carried forward, as provided in subdivision (*l*), until the credit has been exhausted.

This section shall remain in effect on and after December 1, 1990, for as long as Section 42 of the Internal Revenue Code pertaining to low-income housing credits remains in effect.

(r) The amendments to this section by the act adding this subdivision shall apply only to taxable years beginning on or after January 1, 1994.

SEC. 3. Section 23610.5 of the Revenue and Taxation Code is amended to read:

23610.5. (a) (1) There shall be allowed as a credit against the "tax" (as defined by Section 23036) a state low-income housing tax credit in an amount equal to the amount determined in subdivision (c), computed in accordance with Section 42 of the Internal Revenue Code of 1986, except as otherwise provided in this section.

(2) "Taxpayer," for purposes of this section, means the sole owner in the case of a C corporation, the partners in the case of a partnership, and the shareholders in the case of an S corporation.

(3) "Housing sponsor," for purposes of this section, means the sole owner in the case of a C corporation, the partnership in the case of a partnership, and the S corporation in the case of an S corporation.

(b) (1) The amount of the credit allocated to any housing sponsor shall be authorized by the California Tax Credit Allocation Committee, or any successor thereof, based on a project's need for the credit for economic feasibility in accordance with the requirements of this section.

(A) The low-income housing project shall be located in California and shall meet either of the following requirements:

(i) The project's housing sponsor shall have been allocated by the California Tax Credit Allocation Committee a credit for federal income tax purposes under Section 42 of the Internal Revenue Code.

(ii) It shall qualify for a credit under Section 42(h)(4)(B) of the Internal Revenue Code.

(B) The California Tax Credit Allocation Committee shall not require fees for the credit under this section in addition to those fees required for applications for the tax credit pursuant to Section 42 of the Internal Revenue Code. The committee may require a fee if the application for the credit under this section is submitted in a calendar year after the year the application is submitted for the federal tax credit.

(2) (A) The California Tax Credit Allocation Committee shall certify to the housing sponsor the amount of tax credit under this section allocated to the housing sponsor for each credit period.

(B) In the case of a partnership or an S corporation, the housing sponsor shall provide a copy of the California Tax Credit Allocation Committee certification to the taxpayer.

(C) The taxpayer shall, upon request, provide a copy of the certification to the Franchise Tax Board.

(D) All elections made by the taxpayer pursuant to Section 42 of the Internal Revenue Code shall apply to this section.

(E) For buildings located in designated difficult development areas or qualified census tracts as defined in Section 42(d)(5)(C) of the Internal Revenue Code, credits may be allocated under this section in the amounts prescribed in subdivision (c), provided that the amount of credit allocated under Section 42 of the Internal

Revenue Code is computed on 100 percent of the qualified basis of the building.

(c) Section 42(b) of the Internal Revenue Code shall be modified as follows:

(1) In the case of any qualified low-income building placed in service by the housing sponsor during 1987, the term "applicable percentage" means 9 percent for each of the first three years and 3 percent for the fourth year for new buildings (whether or not the building is federally subsidized) and for existing buildings.

(2) In the case of any qualified low-income building that receives an allocation after 1989 and is a new building not federally subsidized, the term "applicable percentage" means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings that are not federally subsidized for the taxable year, determined in accordance with the requirements of Section 42(b)(2) of the Internal Revenue Code, in lieu of the percentage prescribed in Section 42(b)(1)(A).

(B) For the fourth year, the difference between 30 percent and the sum of the applicable percentages for the first three years.

(3) In the case of any qualified low-income building that receives an allocation after 1989 and that is a new building that is federally subsidized or that is an existing building that is "at risk of conversion," the term "applicable percentage" means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings that are federally subsidized for the taxable year.

(B) For the fourth year, the difference between 13 percent and the sum of the applicable percentages for the first three years.

(4) For purposes of this section, the term "at risk of conversion," with respect to an existing building means a building that satisfies all of the following criteria:

(A) The building is presently owned by a housing sponsor other than a qualified nonprofit organization.

(B) The building is a federally assisted building for which the low-income use restrictions will terminate or the building is eligible for prepayment under Subtitle 13 of the Emergency Low Income Housing Assistance Act of 1987 or under Section 502(c) of the Housing Act of 1949, anytime in the two calendar years after the year of application to the California Tax Credit Allocation Committee, and the purchaser has received preliminary approval from the applicable federal agency for a maximum level of incentives through a plan of action.

(C) The person acquiring the building enters into a regulatory agreement that requires the building to be operated in accordance with the requirements of this section for a period equal to the greater of 55 years or the life of the building.

(D) The building satisfies the requirements of Section 42(e) of the Internal Revenue Code regarding rehabilitation expenditures,

except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not apply.

(d) The term "qualified low-income housing project" as defined in Section 42(c)(2) of the Internal Revenue Code is modified by adding the following requirements:

(1) The taxpayer shall be entitled to receive a cash distribution from the operations of the project, after funding required reserves, which, at the election of the taxpayer, is equal to:

(A) An amount not to exceed 8 percent of the lesser of:

(i) The owner equity that shall include the amount of the capital contributions actually paid to the housing sponsor and shall not include any amounts until they are paid on an investor note; or

(ii) Twenty percent of the adjusted basis of the building as of the close of the first income year of the credit period; or

(B) The amount of the cash-flow from those units in the building that are not low-income units. For purposes of computing cash-flow under this subparagraph, operating costs shall be allocated to the low-income units using the "floor space fraction," as defined in Section 42 of the Internal Revenue Code.

(C) Any amount allowed to be distributed under subparagraph (A) that is not available for distribution during the first five years of the compliance period may accumulate and be distributed any time during the first 15 years of the compliance period but not thereafter.

(2) The limitation on return shall apply in the aggregate to the partners if the housing sponsor is a partnership and in the aggregate to the shareholders if the housing sponsor is an S corporation.

(3) The housing sponsor shall apply any cash available for distribution in excess of the amount eligible to be distributed under paragraph (1) to reduce the rent on rent-restricted units or to increase the number of rent-restricted units subject to the tests of Section 42(g)(1) of the Internal Revenue Code.

(e) The provisions of Section 42(f) of the Internal Revenue Code shall be modified as follows:

(1) The term "credit period" as defined in Section 42(f)(1) of the Internal Revenue Code is modified by substituting "four income years" for "10 taxable years."

(2) The special rule for the first taxable year of the credit period under Section 42(f)(2) of the Internal Revenue Code shall not apply to the tax credit under this section.

(3) Section 42(f)(3) of the Internal Revenue Code is modified to read:

If, as of the close of any income year in the compliance period, after the first year of the credit period, the qualified basis of any building exceeds the qualified basis of that building as of the close of the first year of the credit period, the housing sponsor, to the extent of its tax credit allocation, shall be eligible for a credit on the excess in an amount equal to the applicable percentage determined pursuant to

subdivision (c) for the four-year period beginning with the later of the income years in which the increase in qualified basis occurs.

(f) The provisions of Section 42(h) of the Internal Revenue Code shall be modified as follows:

(1) Section 42(h)(2) of the Internal Revenue Code shall not be applicable and instead the following provisions shall be applicable:

The total amount for the four-year credit period of the housing credit dollars allocated in a calendar year to any building shall reduce the aggregate housing credit dollar amount of the California Tax Credit Allocation Committee for the calendar year in which the allocation is made.

(2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I), (7), and (8) of Section 42(h) of the Internal Revenue Code shall not be applicable.

(g) The aggregate housing credit dollar amount which may be allocated annually by the California Tax Credit Allocation Committee pursuant to this section, Section 12206, and Section 17058 shall be an amount equal to the sum of the following:

(1) (A) Except as provided in subparagraph (B), thirty-five million dollars ($35,000,000) for the 1997 calendar year, and each calendar year thereafter.

(B) Fifty million dollars ($50,000,000) for each of the calendar years 1998 and 1999.

(2) The unused housing credit ceiling, if any, for the preceding calendar years; and

(3) The amount of housing credit ceiling returned in the calendar year. For purposes of this paragraph, the amount of housing credit dollar amount returned in the calendar year equals the housing credit dollar amount previously allocated to any project that does not become a qualified low-income housing project within the period required by this section or to any project with respect to which an allocation is canceled by mutual consent of the California Tax Credit Allocation Committee and the allocation recipient.

(h) The term "compliance period" as defined in Section 42(i)(1) of the Internal Revenue Code is modified to mean, with respect to any building, the period of 30-consecutive income years beginning with the first income year of the credit period with respect thereto.

(i) Section 42(j) of the Internal Revenue Code shall not be applicable and the following shall be substituted in its place:

(1) The requirements of this section shall be set forth in a regulatory agreement between the California Tax Credit Allocation Committee and the housing sponsor, and this agreement shall be subordinated, when required, to any lien or encumbrance of any banks or other institutional lenders to the project. The regulatory agreement entered into pursuant to subdivision (f) of Section 50199.14 of the Health and Safety Code, shall apply, providing the agreement includes all of the following provisions:

(A) A term not less than the compliance period.

(B) A requirement that the agreement be filed in the official records of the county in which the qualified low-income housing project is located.

(C) A provision stating which state and local agencies can enforce the regulatory agreement in the event the housing sponsor fails to satisfy any of the requirements of this section.

(D) A provision that the regulatory agreement shall be deemed a contract enforceable by tenants as third-party beneficiaries thereto, and which allows individuals, whether prospective, present, or former occupants of the building, who meet the income limitation applicable to the building, the right to enforce the regulatory agreement in any state court.

(E) A provision incorporating the requirements of Section 42 of the Internal Revenue Code as modified by this section.

(F) A requirement that the housing sponsor notify the California Tax Credit Allocation Committee or its designee if there is a determination by the Internal Revenue Service that the project is not in compliance with Section 42(g) of the Internal Revenue Code.

(G) A requirement that the housing sponsor, as security for the performance of the housing sponsor's obligations under the regulatory agreement, assign the housing sponsor's interest in rents that it receives from the project, provided that until there is a default under the regulatory agreement, the housing sponsor is entitled to collect and retain the rents.

(H) The remedies available in the event of a default under the regulatory agreement that is not cured within a reasonable cure period, include, but are not limited to, allowing any of the parties designated to enforce the regulatory agreement to collect all rents with respect to the project; taking possession of the project and operating the project in accordance with the regulatory agreement until the enforcer determines the housing sponsor is in a position to operate the project in accordance with the regulatory agreement; applying to any court for specific performance; securing the appointment of a receiver to operate the project; or any other relief as may be appropriate.

(j) (1) The committee shall allocate the housing credit on a regular basis consisting of two or more periods in each calendar year during which applications may be filed and considered. The committee shall establish application filing deadlines, the maximum percentage of federal and state low-income housing tax credit ceiling that may be allocated by the committee in that period, and the approximate date on which allocations shall be made. If the enactment of federal or state law, the adoption of rules or regulations, or other similar events prevent the use of two allocation periods, the committee may reduce the number of periods and adjust the filing deadlines, maximum percentage of credit allocated, and the allocation dates.

(2) The committee shall adopt a qualified allocation plan, as provided in Section 42(m)(1) of the Internal Revenue Code. In adopting this plan, the committee shall comply with the provisions of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue Code.

(3) Notwithstanding Section 42(m) of the Internal Revenue Code, the California Tax Credit Allocation Committee shall allocate housing credits in accordance with the qualified allocation plan and regulations, which shall include the following provisions:

(A) All housing sponsors, as defined by paragraph (3) of subdivision (a), shall demonstrate at the time the application is filed with the committee that the project meets the following threshold requirements:

(i) The housing sponsor shall demonstrate there is a need for low-income housing in the community or region for which it is proposed.

(ii) The project's proposed financing, including tax credit proceeds, shall be sufficient to complete the project and shall be adequate to operate the project for the extended use period.

(iii) The project shall have enforceable financing commitments, either construction or permanent financing, for at least 50 percent of the total estimated financing of the project.

(iv) The housing sponsor shall have and maintain control of the site for the project.

(v) The housing sponsor shall demonstrate that the project complies with all applicable local land use and zoning ordinances.

(vi) The housing sponsor shall demonstrate that the project development team has the experience and the financial capacity to ensure project completion and operation for the extended use period.

(vii) The housing sponsor shall demonstrate the amount of tax credit that is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the extended use period, taking into account operating expenses, a supportable debt service, reserves, funds set aside for rental subsidies, and required equity, and a development fee that does not exceed a specified percentage of the eligible basis of the project prior to inclusion of the development fee in the eligible basis, as determined by the committee.

(B) The committee shall give a preference to those projects satisfying all of the threshold requirements of subparagraph (A) if:

(i) The project serves the lowest income tenants at rents affordable to those tenants; and

(ii) The project is obligated to serve qualified tenants for the longest period.

(C) In addition to the provisions of subparagraphs (A) and (B), the committee shall use the following criteria in allocating housing credits:

(i) Projects serving large families in which a substantial number, as defined by the committee of all residential units is comprised of low-income units with three and more bedrooms.

(ii) Projects providing single room occupancy units serving very low income tenants.

(iii) Existing projects that are "at risk of conversion," as defined by paragraph (4) of subdivision (c).

(iv) Projects for which a public agency provides direct or indirect long-term financial support for at least 15 percent of the total project development costs or projects for which the owner's equity constitutes at least 30 percent of the total project development costs.

(v) Projects that provide tenant amenities not generally available to residents of low-income housing projects.

(4) For purposes of allocating credits pursuant to this section, the committee shall not give preference to any project by virtue of the date of submission of its application except to break a tie when two or more of the projects have an equal rating.

(5) Not less than 20 percent of the low-income housing tax credits available annually under this section, Section 12206, and Section 17058 shall be set aside for allocation to rural areas as defined in Section 50199.21 of the Health and Safety Code. Any amount of credit set aside for rural areas remaining on or after October 31 of any calendar year shall be available for allocation to any eligible project. No amount of credit set aside for rural areas shall be considered available for any eligible project so long as there are eligible rural applications pending on October 31.

(k) Section 42(*l*) of the Internal Revenue Code shall be modified as follows:

The term "secretary" shall be replaced by the term "California Franchise Tax Board."

(*l*) In the case where the state credit allowed under this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(m) A project that received an allocation of a 1989 federal housing credit dollar amount shall be eligible to receive an allocation of a 1990 state housing credit dollar amount, subject to all of the following conditions:

(1) The project was not placed in service prior to 1990.

(2) To the extent the amendments made to this section by the Statutes of 1990 conflict with any provisions existing in this section prior to those amendments, the prior provisions of law shall prevail.

(3) Notwithstanding paragraph (2), a project applying for an allocation under this subdivision shall be subject to the requirements of paragraph (3) of subdivision (j).

(n) The credit period with respect to an allocation of credit in 1989 by the California Tax Credit Allocation Committee of which any

amount is attributable to unallocated credit from 1987 or 1988 shall not begin until after December 31, 1989.

(o) The provisions of Section 11407(a) of Public Law 101-508, relating to the effective date of the extension of the low-income housing credit, shall apply to calendar years after 1989.

(p) The provisions of Section 11407(c) of Public Law 101-508, relating to election to accelerate credit, shall not apply.

(q) (1) A corporation may elect to assign any portion of any credit allowed under this section to one or more affiliated corporations for each income year in which the credit is allowed. For purposes of this subdivision, "affiliated corporation" has the meaning provided in subdivision (b) of Section 25110, as that section was amended by Chapter 881 of the Statutes of 1993, as of the last day of the income year in which the credit is allowed, except that "100 percent" is substituted for "more than 50 percent" wherever it appears in the section, as that section was amended by Chapter 881 of the Statutes of 1993, and "voting common stock" is substituted for "voting stock" wherever it appears in the section, as that section was amended by Chapter 881 of the Statutes of 1993.

(2) The election provided in paragraph (1):

(A) May be based on any method selected by the corporation that originally receives the credit.

(B) Shall be irrevocable for the income year the credit is allowed, once made.

(C) May be changed for any subsequent income year if the election to make the assignment is expressly shown on each of the returns of the affiliated corporations that assign and receive the credits.

(r) Any unused credit may continue to be carried forward, as provided in subdivision (k), until the credit has been exhausted.

This section shall remain in effect on or after December 1, 1990, for as long as Section 42 of the Internal Revenue Code, pertaining to low-income housing credits, remains in effect.

(s) The amendments to this section made by the act adding this subdivision shall apply only to income years beginning on or after January 1, 1994, except that paragraph (1) of subdivision (q), as amended, shall apply to income years beginning on or after January 1, 1993.

SEC. 4. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, the provisions of this act shall be operative for tax years, taxable years, or income years beginning on or after January 1, 1998.

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CHAPTER 10

An act to add and repeal Section 19613.05 of the Business and Professions Code, relating to horse racing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor March 25, 1998. Filed with Secretary of State March 26, 1998.]

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

SECTION 1. Section 19613.05 is added to the Business and Professions Code, to read:

19613.05. (a) Any association, including a fair, that conducts thoroughbred racing shall pay to the owners' organization, contracting with the association with respect to the conduct of thoroughbred racing, an additional $1^3/_4$ percent of the portion required by Section 19613 for a national marketing program. These funds shall be used exclusively for the promotion of thoroughbred racing in conjunction with a national thoroughbred racing marketing program. Funds that may not be needed for this effort shall be returned to the purse pool at the racing associations where these funds were raised in direct proportion to the amount in which they were initially raised. The owners' organization shall file a report with the board and the respective Committees on Governmental Organization of the Senate and Assembly, accounting for the receipt and expenditure of these funds on an annual basis. The board of directors of the owners' organization shall have the discretion to select the national marketing organization that shall be the recipient of these funds. If the board of directors of the owners' organization decides at any time not to contribute to the national marketing organization, notice shall be given promptly to the respective racing association or associations and the $1^3/_4$ percent deduction shall cease until the owners' organization decides otherwise.

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

In order for the funding of the national thoroughbred racing marketing program established by this act to commence at the earliest possible time, it is necessary that this act take effect immediately.

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CHAPTER 11

An act to amend Sections 11000.1, 11010.2, 11010.4, 11018.3, and 11018.12 of the Business and Professions Code, relating to subdivided lands.

[Approved by Governor March 25, 1998. Filed with Secretary of State March 26, 1998.]

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

SECTION 1. Section 11000.1 of the Business and Professions Code is amended to read:

11000.1. (a) "Subdivided lands" and "subdivision," as defined by Sections 11000 and 11004.5, also include improved or unimproved land or lands, a lot or lots, or a parcel or parcels, of any size, in which, for the purpose of sale or lease or financing, whether immediate or future, five or more undivided interests are created or are proposed to be created.

(b) This section does not apply to the creation or proposed creation of undivided interests in land if any one of the following conditions exists:

(1) The undivided interests are held or to be held by persons related one to the other by blood or marriage.

(2) The undivided interests are to be purchased and owned solely by persons who present evidence satisfactory to the Real Estate Commissioner that they are knowledgeable and experienced investors who comprehend the nature and extent of the risks involved in the ownership of these interests. The Real Estate Commissioner shall grant an exemption from this part if the undivided interests are to be purchased by no more than 10 persons, each of whom furnishes a signed statement to the commissioner that he or she (1) is fully informed concerning the real property to be acquired and his or her interest therein including the risks involved in ownership of undivided interests, and (2) is purchasing the interest or interests for his or her own account and with no present intention to resell or otherwise dispose of the interest for value, and (3) expressly waives protections afforded to a purchaser by this part.

(3) The undivided interests are created as the result of a foreclosure sale.

(4) The undivided interests are created by a valid order or decree of a court.

(5) The offering and sale of the undivided interests have been expressly qualified by the issuance of a permit from the Commissioner of Corporations pursuant to the Corporate Securities Law of 1968.

(6) The real property is offered for sale as a time-share project as defined in Section 11003.5.

SEC. 2. Section 11010.2 of the Business and Professions Code is amended to read:

11010.2. (a) As used in this section:

(1) "Quantitative" means the number and type of documents required to make the filing substantially complete, as defined in the regulations of the commissioner, without regard to the content of those requirements.

(2) "Qualitatively complete" means that all deficiencies and substantive inadequacies contained in the documents that were required to make the filing substantially complete have been corrected.

(3) "Substantially complete" means that a notice and application contain all requirements as set forth in the regulations of the commissioner.

(b) Upon receipt of a notice of intention pursuant to Section 11010 and an application for issuance of a public report, the commissioner shall review the notice and application to determine if the notice and application are substantially complete, with respect to quantitative requirements. The commissioner shall notify the applicant in writing of that determination within 10 days of receipt of the notice and application.

(1) If the notice and application are not substantially complete with respect to the quantitative requirements pursuant to this subdivision, the notification shall specify the information needed to make the notice and application substantially complete. Upon receipt of any resubmittal of a notice and application, the commissioner shall notify the applicant in writing of that determination within 10 days of receipt of the notice and application.

(2) If the commissioner determines that the notice and application are substantially complete with respect to the quantitative requirements pursuant to this subdivision, the commissioner shall provide the applicant with a list of all deficiencies and substantive inadequacies necessary for the notice and application to be qualitatively complete, within 60 days of that determination, in the case of subdivisions specified in Section 11000.1 or 11004.5, and within 20 days of that determination, in the case of other subdivisions.

(c) Upon receipt of all documents, materials, writings, and other information submitted in response to the list in paragraph (2) of subdivision (b), the commissioner shall notify the applicant whether the notice and application are qualitatively complete within 30 days, in the case of subdivisions specified in Section 11000.1 or 11004.5, and within 20 days of receipt, in the case of other subdivisions. If the application and notice are not qualitatively complete, the notification shall include a list of any remaining deficiencies and substantive inadequacies. Upon receipt of any resubmittal of documents, materials, writings, and other information in response to a list of any remaining deficiencies and substantive inadequacies, the

commissioner shall provide notification within the time limits specified in this subdivision.

(d) The commissioner shall issue a public report within 15 days, in the case of a subdivision specified in Section 11000.1 or 11004.5, or 10 days, in the case of other subdivisions, after the notice and application are determined to be qualitatively and substantially complete, and submittal of recorded or filed instruments and evidence of financial arrangements required by the commissioner.

(e) The commissioner shall adopt regulations, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, that define "substantially complete" and that list all the requirements necessary for a notice of intention and application to be considered "substantially complete."

(f) The commissioner may adopt 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, to increase, as set forth below, those time periods specified in subdivisions (b), (c), and (d), upon a showing that the number of notices of intention and applications for a subdivision public report filed with the department for any immediately preceding six-month period has increased by more than 15 percent over the monthly average number of notices and applications filed for the base period commencing July 1, 1983, and ending June 30, 1986:

(1) The time for issuing the notice provided in subdivision (b) shall increase to 15 days.

(2) The time for providing the listing required by paragraph (2) of subdivision (b) shall increase to 90 days, in the case of subdivisions specified in Sections 11000.1 and 11004.5, and to 30 days, in the case of other subdivisions.

(3) The time period provided in subdivision (c) for responding to receipt of documents intended to correct deficiencies shall be 30 days without regard to the type of subdivision being processed.

(4) The time periods provided in subdivision (d) within which the commissioner is required to issue a public report in the case of subdivisions specified in Sections 11000.1 and 11004.5, shall increase to 30 days and in the case of other subdivisions shall increase to 15 days.

This section does not apply to filings made exclusively under Section 11010.1. Nothing in this section requires the commissioner to issue a public report where grounds for denial exist, provided that issuance of a public report shall not be denied for inadequate information if the cause thereof is the commissioner's failure to comply with this section.

Notwithstanding other provisions of this section, the commissioner shall not be required to issue a public report if grounds for denial exist under Section 11018 or 11018.5. However, the commissioner may not base the denial of a public report on the lack of adequate information

if the commissioner has not acted within the time periods prescribed in this section.

SEC. 3. Section 11010.4 of the Business and Professions Code is amended to read:

11010.4. The notice of intention specified in Section 11010 is not required for a proposed offering of subdivided land that satisfies all of the following criteria:

(a) The owner, subdivider, or agent has complied with Sections 11013.1, 11013.2, and 11013.4, if applicable.

(b) The subdivided land is not a subdivision as defined in Section 11000.1 or 11004.5.

(c) Each lot, parcel or unit of the subdivision is located entirely within the boundaries of a city.

(d) Each lot, parcel or unit of the subdivision will be sold or offered for sale improved with a completed residential structure and with all other improvements completed that are necessary to occupancy or with financial arrangements determined to be adequate by the city to ensure completion of the improvements.

SEC. 4. Section 11018.3 of the Business and Professions Code is amended to read:

11018.3. Any subdivider objecting to the denial of a public report may, within 30 days after receipt of the order of denial, file a written request for a hearing. The commissioner shall hold the hearing within 20 days thereafter unless the party requesting the hearing requests a postponement. If the hearing is not held within 20 days after request for a hearing is received plus the period of the postponement or if a proposed decision is not rendered within 45 days after submission and an order adopting or rejecting the proposed decision is not issued within 15 days thereafter, the order of denial shall be rescinded and a public report issued.

SEC. 5. Section 11018.12 of the Business and Professions Code is amended to read:

11018.12. (a) The commissioner may issue a conditional public report for a subdivision specified in Section 11004.5 if the requirements of subdivision (e) are met, all deficiencies and substantive inadequacies in the documents that are required to make an application for a final public report for the subdivision substantially complete have been corrected, the material elements of the setup of the offering to be made under the authority of the conditional public report have been established, and all requirements for the issuance of a public report set forth in the regulations of the commissioner have been satisfied, except for one or more of the following requirements, as applicable:

(1) A final map has not been recorded.

(2) A condominium plan pursuant to subdivision (e) of Section 1351 of the Civil Code has not been recorded.

(3) A declaration of covenants, conditions, and restrictions pursuant to Section 1353 of the Civil Code has not been recorded.

(4) A declaration of annexation has not been recorded.

(5) A recorded subordination of existing liens to the declaration of covenants, conditions, and restrictions or declaration of annexation or escrow instructions to effect recordation prior to the first sale are lacking.

(6) Filed articles of incorporation are lacking.

(7) A current preliminary report of a licensed title insurance company issued after filing of the final map and recording of the declaration covering all subdivision interests to be included in the public report has not been provided.

(8) Other requirements the commissioner determines are likely to be timely satisfied by the applicant, notwithstanding the fact that the failure to meet these requirements makes the application qualitatively incomplete.

(b) The commissioner may issue a conditional public report for a subdivision not referred to or specified in Section 11000.1 or 11004.5 if the requirements of subdivision (e) are met, all deficiencies and substantive inadequacies in the documents that are required to make an application for a final public report for the subdivision substantially complete have been corrected, the material elements of the setup of the offering to be made under the authority of the conditional public report have been established, and all requirements for issuance of a public report set forth in the regulations of the commissioner have been satisfied, except for one or more of the following requirements, as applicable:

(1) A final map has not been recorded.

(2) A declaration of covenants, conditions, and restrictions has not been recorded.

(3) A current preliminary report of a licensed title insurance company issued after filing of the final map and recording of the declaration covering all subdivision interests to be included in the public report has not been provided.

(4) Other requirements the commissioner determines are likely to be timely satisfied by the applicant, notwithstanding the fact that the failure to meet these requirements makes the application qualitatively incomplete.

(c) A decision by the commissioner to not issue a conditional public report shall be noticed in writing to the applicant within five business days and that notice shall specifically state the reasons why the report is not being issued.

(d) Notwithstanding the provisions of Section 11018.2, a person may sell or lease, or offer for sale or lease, lots or parcels in a subdivision pursuant to a conditional public report if, as a condition of the sale or lease or offer for sale or lease, delivery of legal title or other interest contracted for will not take place until issuance of a public report and provided that the requirements of subdivision (e) are met.

(e) (1) Evidence shall be supplied that all purchase money will be deposited in compliance with subdivision (a) of Section 11013.2 or subdivision (a) of Section 11013.4, and in the case of a subdivision referred to in subdivision (a), evidence is given of compliance with paragraphs (1) and (2) of subdivision (a) of Section 11018.5.

(2) A description of the nature of the transaction shall be supplied.

(3) Provision shall be made for the return of the entire sum of money paid or advanced by the purchaser if a subdivision public report has not been issued within six months of the date of issuance of the conditional public report or the purchaser is dissatisfied with the public report because of a change pursuant to Section 11012.

(f) A subdivider, principal, or his or her agent shall provide a prospective purchaser a copy of the conditional public report and a written statement including all of the following:

(1) Specification of the information required for issuance of a public report.

(2) Specification of the information required in the public report that is not available in the conditional public report, along with a statement of the reasons why that information is not available at the time of issuance of the conditional public report.

(3) A statement that no person acting as a principal or agent shall sell or lease or offer for sale or lease lots or parcels in a subdivision for which a conditional public report has been issued except as provided in this article.

(4) Specification of the requirements of subdivision (e).

(g) The prospective purchaser shall sign a receipt that he or she has received and has read the conditional public report and the written statement provided pursuant to subdivision (f).

(h) The term of a conditional public report shall not exceed six months, and may be renewed for one additional term of six months if the commissioner determines that the requirements for issuance of a public report are likely to be satisfied during the renewal term.

CHAPTER 12

An act to amend Section 19568 of, and to add Section 19617.6 to, the Business and Professions Code, relating to horse racing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 1, 1998. Filed with Secretary of State April 1, 1998.]

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

SECTION 1. Section 19568 of the Business and Professions Code is amended to read:

19568. (a) Every licensee conducting a horseracing meeting shall, each racing day, provide for the running of at least one race limited to California-bred horses, to be known as the "California-bred race." If, however, sufficient competition cannot be had among horses of that class on any day, the race, with the consent of the board, may be eliminated for that day and a substitute race provided.

(b) For thoroughbred and quarter horse racing only, the total amount distributed to horsemen and horsewomen for California-bred stakes races from the purse account, including overnight stakes, shall be not less than 10 percent of the total amount distributed for all stakes races from the purse account, including overnight stakes races, at that meeting of the racing association licensed to conduct live racing.

(c) It is the intent of the Legislature that the thoroughbred racing associations in this state, in conjunction with the official registering agency, and owners and trainers organizations meet and report to the board on the establishment of a coordinated California-bred restricted schedule of stakes races designed to showcase California-bred restricted stakes races and qualify registered California-bred horses for the California Cup and the California Cup Day races. It is also the intent of the Legislature that the report be submitted to the board by March 1, 1997, and annually thereafter at least 60 days prior to the start of the racing year.

SEC. 2. Section 19617.6 is added to the Business and Professions Code, to read:

19617.6. (a) Since the purpose of this chapter is to encourage agriculture and the breeding of horses in this state, a sum equal to 10 percent of the first money of each purse won by a registered California-bred horse at a harness racing meeting shall be paid by the licensee conducting the meeting to the owner of the horse. This section applies to any California-bred standardbred horse for all races except the California Standardbred Sires Stakes races, other stakes races designed for California-bred standardbred horses, and late closing events and series conducted at the harness racing meetings in California.

(b) Each licensee conducting a harness race meeting shall pay the sums required to be paid in subdivision (a) out of the amount deducted for purses pursuant to subdivision (b) of Section 19612, Section 19612.6, and subdivision (d) of Section 19616.1.

(c) Funds paid to owners of California-bred standardbred horses pursuant to this section shall be distributed by the licensed harness racing association no later than 30 calendar days after the conclusion of the racing meeting.

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 eliminate a hardship to the horse racing industry at the earliest possible time because of the application of provisions of subdivision (b) of Section 19568 by the California Horse Racing Board to harness and quarter horse racing in addition to thoroughbred racing, it is necessary that this act take effect immediately.

CHAPTER 13

An act to amend Section 6254 of the Government Code, relating to telecommunications.

[Approved by Governor April 6, 1998. Filed with Secretary of State April 7, 1998.]

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

SECTION 1. Section 6254 of the Government Code is amended to read:

6254. Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Contained in or related to:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (1).

(e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, which are obtained in confidence from any person.

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes, except that state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (c) of Section 13960, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files that reflect the analysis or conclusions of the investigating officer.

Other provisions of this subdivision notwithstanding, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the

information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 220, 261, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 220, 261, 262, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(3) Subject to the restrictions of Section 841.5 of the Penal Code and this subdivision, the current address of every individual arrested by the agency and the current address of the victim of a crime, where the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator as described in Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code, except that the address of the victim of any crime defined by Section 220, 261, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code shall remain confidential. Address information obtained pursuant to this paragraph shall not be used directly or indirectly to sell a product or service to any individual or group of individuals, and the requester shall execute a declaration to that effect under penalty of perjury.

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of the Education Code.

(h) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. However, the law of eminent domain shall not be affected by this provision.

(i) Information required from any taxpayer in connection with the collection of local taxes that is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.

(j) Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum

materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.

(k) Records the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

(*l*) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's legal affairs secretary, provided that public records shall not be transferred to the custody of the Governor's legal affairs secretary to evade the disclosure provisions of this chapter.

(m) In the custody of or maintained by the Legislative Counsel, except those records in the public data base maintained by the Legislative Counsel that are described in Section 10248.

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for.

(o) Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, where an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain guarantees from the United States Small Business Administration. The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making available to the public those portions of an application which are subject to disclosure under this chapter.

(p) Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), and Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, that reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or that provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under these chapters. Nothing in this subdivision shall be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this subdivision.

(q) Records of state agencies related to activities governed by Articles 2.6 (commencing with Section 14081), 2.8 (commencing with Section 14087.5), and 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, that reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations

with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or that provide instruction, advice, or training to employees.

Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. In the event that a contract for inpatient services that is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments until the time a contract or amendment is fully open to inspection by the public.

(r) Records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals that has been transmitted to the State Department of Health Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Division 3 of Title 4 of this code, that relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 or 11512 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

(u) Information contained in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department that indicates when or where the applicant is vulnerable to attack or that concerns the applicant's medical or psychological history or that of members of his or her family.

(v) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Part 6.3 (commencing with Section 12695), and Part 6.5 (commencing with Section 12700), of Division

2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Part 6.3 (commencing with Section 12695), or Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, on or after July 1, 1991, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract for health coverage that is entered into prior to July 1, 1991, is amended on or after July 1, 1991, the amendment, except for any portion containing the rates of payment shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (3).

(w) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after they have been fully executed.

(3) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (2).

(x) Financial data contained in applications for registration, or registration renewal, as a service contractor filed with the Director

of the Department of Consumer Affairs pursuant to Chapter 20 (commencing with Section 9800) of Division 3 of the Business and Professions Code, for the purpose of establishing the service contractor's net worth, or, financial data regarding the funded accounts held in escrow for service contracts held in force in this state by a service contractor.

(y) (1) Records of the Managed Risk Medical Insurance Board related to activities governed by Part 6.2 (commencing with Section 12693) of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts entered into pursuant to Part 6.2 (commencing with Section 12693) of Division 2 of the Insurance Code, on or after January 1, 1998, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract entered into pursuant to Part 6.2 (commencing with Section 12693) of Division 2 of the Insurance Code is amended, the amendment shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto until the contract or amendments to a contract are open to inspection pursuant to paragraph (2) or (3).

(z) Records obtained pursuant to paragraph (2) of subdivision (c) of Section 2891.1 of the Public Utilities Code.

Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

Nothing in this section prevents any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act.

CHAPTER 14

An act to add Section 784 to, and to repeal Section 1464 of, the Civil Code, and to amend Section 336 of the Code of Civil Procedure, relating to real property.

[Approved by Governor April 6, 1998. Filed with Secretary of State April 7, 1998.]

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

SECTION 1. Section 784 is added to the Civil Code, to read:

784. "Restriction," when used in a statute that incorporates this section by reference, means a limitation on, or provision affecting, the use of real property in a deed, declaration, or other instrument, whether in the form of a covenant, equitable servitude, condition subsequent, negative easement, or other form of restriction.

SEC. 2. Section 1464 of the Civil Code is repealed.

SEC. 3. Section 336 of the Code of Civil Procedure is amended to read:

336. Within five years:

(a) An action for mesne profits of real property.

(b) An action for violation of a restriction, as defined in Section 784 of the Civil Code. The period prescribed in this subdivision runs from the time the person seeking to enforce the restriction discovered or, through the exercise of reasonable diligence, should have discovered the violation. A failure to commence an action for violation of a restriction within the period prescribed in this subdivision does not waive the right to commence an action for any other violation of the restriction and does not, in itself, create an implication that the restriction is abandoned, obsolete, or otherwise unenforceable. This subdivision shall not bar commencement of an action for violation of a restriction before January 1, 2001, and until January 1, 2001, any other applicable statutory or common law limitation shall continue to apply to that action.

CHAPTER 15

An act to amend Section 7051.3 of the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 6, 1998. Filed with Secretary of State April 7, 1998.]

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

SECTION 1. Section 7051.3 of the Revenue and Taxation Code is amended to read:

7051.3. (a) "Use tax direct payment permit" means a permit issued by the board that allows a taxpayer to self-assess and pay state and local use tax under Part 1 (commencing with Section 6001), Part 1.5 (commencing with Section 7200), and if otherwise applicable, Part 1.6 (commencing with Section 7251), and Part 1.7 (commencing with Section 7280) directly to the board.

(b) Every person seeking to pay use taxes directly to the board shall file an application for a use tax direct payment permit. An application for a use tax direct payment permit shall be made upon a form prescribed by the board and shall set forth the name under which the applicant transacts or intends to transact business, the location of the place or places of business where the applicant intends to make direct payment of use tax, and any other information that the board may require. An applicant for a use tax direct payment permit may register as a place to make direct payment of use tax, any of the places of business in this state that the applicant expects to be a place of first use for purchases subject to use tax, in accordance with the requirements of subdivision (d). The application shall be signed by the owner, if a natural person; in the case of an association or partnership, by a member or partner; and in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application.

(c) Pursuant to an application, a use tax direct payment permit shall be issued to any person who meets all of the following conditions:

(1) The applicant agrees to self-assess and pay directly to the board any use tax liability incurred under this section.

(2) The applicant certifies to the board either of the following:

(A) The applicant is the purchaser for its own use or is the lessee of tangible personal property at a cost of five hundred thousand dollars ($500,000) or more in the aggregate, during the calendar year immediately preceding the application for the permit.

(B) The applicant is a county, city, city and county, or redevelopment agency.

(d) Any person who holds a valid use tax direct payment permit shall self-assess and pay directly to the board use taxes due under this part, Part 1.5 (commencing with Section 7200), and if otherwise applicable, Part 1.6 (commencing with Section 7251), and Part 1.7 (commencing with Section 7280) for all purchases subject to use tax for which a use tax direct payment exemption certificate was issued, and shall report on the tax return required to be filed by Section 6452, the amount of local use tax applicable to each county, city, city and county, or redevelopment agency in which the first "use," as defined in Section 6009, occurs.

(e) The board shall allow any holder of a use tax direct payment permit to issue a use tax direct payment certificate to any registered retailer or seller subject to all of the following:

(1) The use tax direct payment certificate shall be in a form prescribed by the board, and shall be signed by, and bear the name, address, and permit number of, the holder of the use tax direct payment permit.

(2) Once a use tax direct payment certificate has been issued by a holder of a use tax direct payment permit, it shall remain effective until revised or withdrawn by the holder of the permit or until the retailer or seller has received actual notice that the permit has been revoked by the board.

(3) A use tax direct payment certificate relieves a person selling property from the duty of collecting use tax only if taken in good faith from a person who holds a use tax direct payment permit. A purchaser who issues a use tax direct payment certificate that is accepted in good faith by a seller or retailer of tangible personal property shall be the sole person liable for any sales tax and related interest and penalties with respect to any transaction that is subsequently determined by the board to be subject to sales tax and not use tax.

(4) Any person who holds a use tax direct payment permit and gives a use tax direct payment certificate to a seller or retailer shall, in addition to any applicable use tax liabilities, be subject to the same penalty provisions that apply to a seller or retailer.

(f) It is the intent of the Legislature that the board administer this part in a manner which assures that local use tax be received by the county, city, city and county, or redevelopment agency where the first use occurs.

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

In order for the State Board of Equalization to avoid an expensive and imprecise process of allocating local revenue, it is necessary that this act take effect immediately.

CHAPTER 16

An act to amend Section 22435.7 of, and to add Section 22435.8 to, the Business and Professions Code, relating to shopping carts.

[Approved by Governor April 6, 1998. Filed with Secretary of State April 7, 1998.]

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

SECTION 1. Section 22435.7 of the Business and Professions Code is amended to read:

22435.7. (a) The Legislature hereby finds that the retrieval by local government agencies of shopping carts specified in this section is in need of uniform statewide regulation and constitutes a matter of statewide concern that shall be governed solely by this section.

(b) A shopping cart that has a sign affixed to it in accordance with Section 22435.1 may be impounded by a city, county, or city and county, provided both of the following conditions have been satisfied:

(1) The shopping cart is located outside the premises or parking area of a retail establishment. The parking area of a retail establishment located in a multistore complex or shopping center shall include the entire parking area used by the complex or center.

(2) Except as provided in subdivision (i), the shopping cart is not retrieved within three business days from the date the owner of the shopping cart, or his or her agent, receives actual notice from the city, county, or city and county of the shopping cart's discovery and location.

(c) In instances where the location of a shopping cart will impede emergency services, a city, county, or city and county is authorized to immediately retrieve the shopping cart from public or private property.

(d) Any city, county, or city and county that impounds a shopping cart under the authority provided in subdivisions (b) and (c) is authorized to recover its actual costs for providing this service.

(e) Any shopping cart that is impounded by a city, county, or city and county pursuant to subdivisions (b) and (c) shall be held at a location that is both:

(1) Reasonably convenient to the owner of the shopping cart.

(2) Open for business at least six hours of each business day.

(f) A city, county, or city and county may fine the owner of a shopping cart in an amount not to exceed fifty dollars ($50) for each occurrence in excess of three during a specified six-month period for failure to retrieve shopping carts in accordance with this section. An occurrence includes all shopping carts impounded in accordance with this section in a one-day period.

(g) Any shopping cart not reclaimed from the city, county, or city and county within 30 days of receipt of a notice of violation by the owner of the shopping cart may be sold or otherwise disposed of by the entity in possession of the shopping cart.

(h) This section shall not invalidate any contract entered into prior to June 30, 1996, between a city, county, or city and county and a person or business entity for the purpose of retrieving or impounding shopping carts.

(i) Notwithstanding paragraph (2) of subdivision (b), a city, county, or city and county may impound a shopping cart that

otherwise meets the criteria set forth in paragraph (1) of subdivision (b) without complying with the three-day advance notice requirement provided that:

(1) The owner of the shopping cart, or his or her agent, is provided actual notice within 24 hours following the impound and that notice informs the owner, or his or her agent, as to the location where the shopping cart may be claimed.

(2) Any shopping cart so impounded shall be held at a location in compliance with subdivision (e).

(3) Any shopping cart reclaimed by the owner or his or her agent, within three business days following the date of actual notice as provided pursuant to paragraph (1), shall be released and surrendered to the owner or agent at no charge whatsoever, including the waiver of any impound and storage fees or fines that would otherwise be applicable pursuant to subdivision (d) or (f). Any cart reclaimed within the three-business-day period shall not be deemed an occurrence for purposes of subdivision (f).

(4) Any shopping cart not reclaimed by the owner or his or her agent, within three business days following the date of actual notice as provided pursuant to paragraph (1), shall be subject to any applicable fee or fine imposed pursuant to subdivision (d) or (f) commencing on the fourth business day following the date of the notice.

(5) Any shopping cart not reclaimed by the owner or his or her agent, within 30 days of receipt following the date of actual notice as provided pursuant to paragraph (1), may be sold or disposed of in accordance with subdivision (g).

SEC. 2. Section 22435.8 is added to the Business and Professions Code, to read:

22435.8. This article shall not invalidate an ordinance of, or be construed to prohibit the adoption of an ordinance by, a city, county, or city and county, which ordinance regulates or prohibits the removal of shopping carts or laundry carts from the premises or parking area of a retail establishment except to the extent any provision of such an ordinance expressly conflicts with any provision of this article.

CHAPTER 17

An act to amend Section 13863 of the Health and Safety Code, relating to public safety services, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 14, 1998. Filed with Secretary of State April 14, 1998.]

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

SECTION 1. Section 13863 of the Health and Safety Code is amended to read:

13863. (a) A district may enter into mutual aid agreements with any federal or state agency, any city, county, city and county, special district, or federally recognized Indian tribe.

(b) A district may also enter into mutual aid agreements with any private firm, corporation, or federally recognized Indian tribe that maintains a full-time fire department. The firm, corporation, or federally recognized Indian tribe, or any of its employees, shall have the same immunity from liability for civil damages on account of personal injury to or death of any person or damage to property resulting from acts or omissions of its fire department personnel in the performance of the provisions of the mutual aid agreement as is provided by law for the district and its employees, except when the act or omission occurs on property under the control of the firm, corporation, or federally recognized Indian tribe.

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

In order to provide urgently needed services within an appropriate timeframe, it is necessary that this act take effect immediately.

CHAPTER 18

An act to amend, repeal, and add Sections 32121 and 32126 of the Health and Safety Code, relating to local health care districts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 14, 1998. Filed with Secretary of State April 14, 1998.]

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

SECTION 1. Section 32121 of the Health and Safety Code is amended to read:

32121. Each local district shall have and may exercise the following powers:

(a) To have and use a corporate seal and alter it at its pleasure.

(b) To sue and be sued in all courts and places and in all actions and proceedings whatever.

(c) To purchase, receive, have, take, hold, lease, use, and enjoy property of every kind and description within and without the limits of the district, and to control, dispose of, convey, and encumber the

same and create a leasehold interest in the same for the benefit of the district.

(d) To exercise the right of eminent domain for the purpose of acquiring real or personal property of every kind necessary to the exercise of any of the powers of the district.

(e) To establish one or more trusts for the benefit of the district, to administer any trust declared or created for the benefit of the district, to designate one or more trustees for trusts created by the district, to receive by gift, devise, or bequest, and hold in trust or otherwise, property, including corporate securities of all kinds, situated in this state or elsewhere, and where not otherwise provided, dispose of the same for the benefit of the district.

(f) To employ legal counsel to advise the board of directors in all matters pertaining to the business of the district, to perform the functions in respect to the legal affairs of the district as the board may direct, and to call upon the district attorney of the county in which the greater part of the land in the district is situated for legal advice and assistance in all matters concerning the district, except that if that county has a county counsel, the directors may call upon the county counsel for legal advice and assistance.

(g) To employ any officers and employees, including architects and consultants, the board of directors deems necessary to carry on properly the business of the district.

(h) To prescribe the duties and powers of the health care facility administrator, secretary, and other officers and employees of any health care facilities of the district, to establish offices as may be appropriate and to appoint board members or employees to those offices, and to determine the number of, and appoint, all officers and employees and to fix their compensation. The officers and employees shall hold their offices or positions at the pleasure of the boards of directors.

(i) To do any and all things that an individual might do that are necessary for, and to the advantage of, a health care facility and a nurses' training school, or a child care facility for the benefit of employees of the health care facility or residents of the district.

(j) To establish, maintain, and operate, or provide assistance in the operation of, one or more health facilities or health services, including, but not limited to, outpatient programs, services, and facilities, retirement programs, services, and facilities, chemical dependency programs, services, and facilities, or other health care programs, services, and facilities and activities at any location within or without the district for the benefit of the district and the people served by the district.

"Health care facilities," as used in this subdivision, means those facilities defined in subdivision (b) of Section 32000.1 and specifically includes freestanding chemical dependency recovery units. "Health facilities," as used in this subdivision, may also include those facilities defined in subdivision (d) of Section 15432 of the Government Code.

(k) To do any and all other acts and things necessary to carry out this division.

(*l*) To acquire, maintain, and operate ambulances or ambulance services within and without the district.

(m) To establish, maintain, and operate, or provide assistance in the operation of, free clinics, diagnostic and testing centers, health education programs, wellness and prevention programs, rehabilitation, aftercare, and any other health care services provider, groups, and organizations that are necessary for the maintenance of good physical and mental health in the communities served by the district.

(n) To establish and operate in cooperation with its medical staff a coinsurance plan between the hospital district and the members of its attending medical staff.

(o) To establish, maintain, and carry on its activities through one or more corporations, joint ventures, or partnerships for the benefit of the health care district.

(p) (1) To transfer, at fair market value, any part of its assets to one or more corporations to operate and maintain the assets. A transfer pursuant to this paragraph shall be deemed to be at fair market value if an independent consultant, with expertise in methods of appraisal and valuation and in accordance with applicable governmental and industry standards for appraisal and valuation, determines that fair and reasonable consideration is to be received by the district for the transferred district assets. Before the district transfers, pursuant to this paragraph, 50 percent or more of the district's assets to one or more corporations, in sum or by increment, the elected board shall, by resolution, submit to the voters of the district a measure proposing the transfer. The measure shall be placed on the ballot of a special election held upon the request of the district or the ballot of the next regularly scheduled election occurring at least 88 days after the resolution of the board. If a majority of the voters voting on the measure vote in its favor, the transfer shall be approved. The campaign disclosure requirements applicable to local measures provided under Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code shall apply to this election.

(2) To transfer, for the benefit of the communities served by the district, in the absence of adequate consideration, any part of the assets of the district, including without limitation real property, equipment, and other fixed assets, current assets, and cash, relating to the operation of the district's health care facilities to one or more nonprofit corporations to operate and maintain the assets.

(A) A transfer of 50 percent or more of the district's assets, in sum or by increment, pursuant to this paragraph shall be deemed to be for the benefit of the communities served by the district only if all of the following occur:

(i) The transfer agreement and all arrangements necessary thereto are fully discussed in advance of the district board decision to transfer the assets of the district in at least five properly noticed open and public meetings in compliance 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, and Section 32106.

(ii) The transfer agreement provides that the hospital district shall approve all initial board members of the nonprofit corporation and any subsequent board members as may be specified in the transfer agreement.

(iii) The transfer agreement provides that all assets transferred to the nonprofit corporation, and all assets accumulated by the corporation during the term of the transfer agreement arising out of or from the operation of the transferred assets, are to be transferred back to the district upon termination of the transfer agreement, including any extension of the transfer agreement.

(iv) The transfer agreement commits the nonprofit corporation to operate and maintain the district's health care facilities and its assets for the benefit of the communities served by the district.

(v) The transfer agreement requires that any funds received from the district at the outset of the agreement or any time thereafter during the term of the agreement be used only to reduce district indebtedness, to acquire needed equipment for the district health care facilities, to operate, maintain, and make needed capital improvements to the district's health care facilities, to provide supplemental health care services or facilities for the communities served by the district, or to conduct other activities that would further a valid public purpose if undertaken directly by the district.

(B) A transfer of 33 percent or more but less than 50 percent of the district's assets, in sum or by increment, pursuant to this paragraph shall be deemed to be for the benefit of the communities served by the district only if both of the following occur:

(i) The transfer agreement and all arrangements necessary thereto are fully discussed in advance of the district board decision to transfer the assets of the district in at least two properly noticed open and public meetings in compliance 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), and Section 32106.

(ii) The transfer agreement meets all of the requirements of clauses (ii) to (v), inclusive, of subparagraph (A).

(C) A transfer of 10 percent or more but less than 33 percent of the district's assets, in sum or by increment, pursuant to this paragraph shall be deemed to be for the benefit of the communities served by the district only if both of the following occur:

(i) The transfer agreement and all arrangements necessary thereto are fully discussed in advance of the district board decision to transfer the assets of the district in at least two properly noticed open and public meetings in compliance 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), and Section 32106.

(ii) The transfer agreement meets all of the requirements of clauses (iii) to (v), inclusive, of subparagraph (A).

(D) Before the district transfers, pursuant to this paragraph, 50 percent or more of the district's assets to one or more nonprofit corporations, in sum or by increment, the elected board shall, by resolution, submit to the voters of the district a measure proposing the transfer. The measure shall be placed on the ballot of a special election held upon the request of the district or the ballot of the next regularly scheduled election occurring at least 88 days after the resolution of the board. If a majority of the voters voting on the measure vote in its favor, the transfer shall be approved. The campaign disclosure requirements applicable to local measures provided under Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code shall apply to this election.

(E) Notwithstanding the other provisions of this paragraph, a hospital district shall not transfer any portion of its assets to a private nonprofit organization that is owned or controlled by a religious creed, church, or sectarian denomination in the absence of adequate consideration.

(3) If the district board has previously transferred less than 50 percent of the district's assets pursuant to this subdivision before any additional assets are transferred, the board shall hold a public hearing and shall make a public determination that the additional assets to be transferred will not, in combination with any assets previously transferred, equal 50 percent or more of the total assets of the district.

(4) The amendments to this subdivision made during the 1991–92 Regular Session, and the amendments made to this subdivision and to Section 32126 made during the 1993–94 Regular Session, shall only apply to transfers made on or after the effective dates of the acts amending this subdivision. The amendments to this subdivision made during those sessions shall not apply to any of the following:

(A) A district that has discussed and adopted a board resolution, prior to September 1, 1992, that authorizes the development of a business plan for an integrated delivery system.

(B) A lease agreement, transfer agreement, or both between a district and a nonprofit corporation that were in full force and effect as of September 1, 1992, for as long as that lease agreement, transfer agreement, or both remain in full force and effect.

(5) Notwithstanding paragraph (4), if substantial amendments are proposed to be made to a transfer agreement described in subparagraph (A) or (B) of paragraph (4), the amendments shall be fully discussed in advance of the district board's decision to adopt the amendments in at least two properly noticed open and public meetings in compliance with Section 32106 and the Ralph M. Brown Act, (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(6) Notwithstanding paragraphs (4) and (5), a transfer agreement described in subparagraph (A) or (B) of paragraph (4) that provided for the transfer of less than 50 percent of a district's assets shall be subject to the requirements of subdivision (p) of Section 32121 when subsequent amendments to that transfer agreement would result in the transfer, in sum or by increment, of 50 percent or more of a district's assets to the nonprofit corporation.

(7) For purposes of this subdivision, a "transfer" means the transfer of ownership of the assets of a district. A lease of the real property or the tangible personal property of a district shall not be subject to this subdivision except as specified in Section 32121.4 and as required under Section 32126.

(8) Districts that request a special election pursuant to paragraph (1) or (2) shall reimburse counties for the costs of that special election as prescribed pursuant to Section 10520 of the Elections Code.

(9) Nothing in this section, including subdivision (j), shall be construed to permit a local district to obtain or be issued a single consolidated license to operate a separate physical plant as a skilled nursing facility or an intermediate care facility that is not located within the boundaries of the district.

(10) A transfer of any of the assets of a district to one or more nonprofit corporations to operate and maintain the assets shall not be required to meet paragraphs (1) to (9), inclusive, of this subdivision if all of the following conditions apply at the time of the transfer:

(A) The district has entered into a loan that is insured by the State of California under Chapter 1 (commencing with Section 129000) of Part 6 of Division 107.

(B) The district is in default of its loan obligations, as determined by the Office of Statewide Health Planning and Development.

(C) The Office of Statewide Health Planning and Development and the district, in their best judgment, agree the transfer of some or all of the assets of the district to a nonprofit corporation or corporations is necessary to cure the default, and will obviate the need for foreclosure. This cure of default provision shall be applicable prior to the office foreclosing on district hospital assets. After the office has foreclosed on district hospital assets, or otherwise taken possession in accordance with law, the office may exercise all of its powers to deal with and dispose of hospital property.

(D) The transfer and all arrangements necessary thereto are discussed in advance of the transfer in at least one properly noticed open and public meeting in compliance 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 and Section 32106. The meeting referred to in this paragraph shall be noticed and held within 90 days of notice in writing to the district by the office of an event of default. If the meeting is not held within this 90-day period, the district shall be deemed to have waived this requirement to have a meeting.

(11) If a transfer under paragraph (10) is a lease, the lease shall provide that the assets shall revert to the district at the conclusion of the leasehold interest. If the transfer is a sale, the proceeds shall be used first to retire the obligation insured by the office, then to retire any other debts of the district. After providing for debts, any remaining funds shall revert to the district.

(q) To contract for bond insurance, letters of credit, remarketing services, and other forms of credit enhancement and liquidity support for its bonds, notes, and other indebtedness and to enter into reimbursement agreements, monitoring agreements, remarketing agreements, and similar ancillary contracts in connection therewith.

(r) To establish, maintain, operate, participate in, or manage capitated health care plans, health maintenance organizations, preferred provider organizations, and other managed health care systems and programs properly licensed by the Department of Insurance or the Department of Corporations, at any location within or without the district for the benefit of residents of communities served by the district. However, that activity shall not be deemed to result in or constitute the giving or lending of the district's credit, assets, surpluses, cash, or tangible goods to, or in aid of, any person, association, or corporation in violation of Section 6 of Article XVI of the California Constitution.

Nothing in this section shall authorize activities that corporations and other artificial legal entities are prohibited from conducting by Section 2400 of the Business and Professions Code.

Any agreement to provide health care coverage that is a health care service plan, as defined in subdivision (f) of Section 1345, shall be subject to the provisions of Chapter 2.2 (commencing with Section 1340) of Division 2, unless exempted pursuant to Section 1343 or 1349.2.

A district shall not provide health care coverage for any employee of an employer operating within the communities served by the district, unless the Legislature specifically authorizes, or has authorized in this section or elsewhere, the coverage.

This section shall not authorize any district to contribute its facilities to any joint venture that could result in transfer of the facilities from district ownership.

(s) To provide health care coverage to members of the district's medical staff, employees of the medical staff members, and the dependents of both groups, on a self-pay basis.

(t) This section shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2001, deletes or extends that date.

SEC. 2. Section 32121 is added to the Health and Safety Code, to read:

32121. Each local district shall have and may exercise the following powers:

(a) To have and use a corporate seal and alter it at its pleasure.

(b) To sue and be sued in all courts and places and in all actions and proceedings whatever.

(c) To purchase, receive, have, take, hold, lease, use, and enjoy property of every kind and description within and without the limits of the district, and to control, dispose of, convey, and encumber the same and create a leasehold interest in the same for the benefit of the district.

(d) To exercise the right of eminent domain for the purpose of acquiring real or personal property of every kind necessary to the exercise of any of the powers of the district.

(e) To establish one or more trusts for the benefit of the district, to administer any trust declared or created for the benefit of the district, to designate one or more trustees for trusts created by the district, to receive by gift, devise, or bequest, and hold in trust or otherwise, property, including corporate securities of all kinds, situated in this state or elsewhere, and where not otherwise provided, dispose of the same for the benefit of the district.

(f) To employ legal counsel to advise the board of directors in all matters pertaining to the business of the district, to perform the functions in respect to the legal affairs of the district as the board may direct, and to call upon the district attorney of the county in which the greater part of the land in the district is situated for legal advice and assistance in all matters concerning the district, except that if that county has a county counsel, the directors may call upon the county counsel for legal advice and assistance.

(g) To employ any officers and employees, including architects and consultants, the board of directors deems necessary to carry on properly the business of the district.

(h) To prescribe the duties and powers of the health care facility administrator, secretary, and other officers and employees of any health care facilities of the district, to establish offices as may be appropriate and to appoint board members or employees to those offices, and to determine the number of, and appoint, all officers and employees and to fix their compensation. The officers and employees shall hold their offices or positions at the pleasure of the boards of directors.

(i) To do any and all things that an individual might do that are necessary for, and to the advantage of, a health care facility and a nurses' training school, or a child care facility for the benefit of employees of the health care facility or residents of the district.

(j) To establish, maintain, and operate, or provide assistance in the operation of, one or more health facilities or health services, including, but not limited to, outpatient programs, services, and facilities, retirement programs, services, and facilities, chemical dependency programs, services, and facilities, or other health care programs, services, and facilities and activities at any location within or without the district for the benefit of the district and the people served by the district.

"Health care facilities," as used in this subdivision, means those facilities defined in subdivision (b) of Section 32000.1 and specifically includes freestanding chemical dependency recovery units. "Health facilities," as used in this subdivision, may also include those facilities defined in subdivision (d) of Section 15432 of the Government Code.

(k) To do any and all other acts and things necessary to carry out this division.

(*l*) To acquire, maintain, and operate ambulances or ambulance services within and without the district.

(m) To establish, maintain, and operate, or provide assistance in the operation of, free clinics, diagnostic and testing centers, health education programs, wellness and prevention programs, rehabilitation, aftercare, and any other health care services provider, groups, and organizations that are necessary for the maintenance of good physical and mental health in the communities served by the district.

(n) To establish and operate in cooperation with its medical staff a coinsurance plan between the hospital district and the members of its attending medical staff.

(o) To establish, maintain, and carry on its activities through one or more corporations, joint ventures, or partnerships for the benefit of the health care district.

(p) (1) To transfer, at fair market value, any part of its assets to one or more nonprofit corporations to operate and maintain the assets. A transfer pursuant to this paragraph shall be deemed to be at fair market value if an independent consultant, with expertise in methods of appraisal and valuation and in accordance with applicable governmental and industry standards for appraisal and valuation, determines that fair and reasonable consideration is to be received by the district for the transferred district assets. Before the district transfers, pursuant to this paragraph, 50 percent or more of the district's assets to one or more nonprofit corporations, in sum or by increment, the elected board shall, by resolution, submit to the voters of the district a measure proposing the transfer. The measure shall be placed on the ballot of a special election held upon the request of the district or the ballot of the next regularly scheduled election occurring at least 88 days after the resolution of the board. If a majority of the voters voting on the measure vote in its favor, the transfer shall be approved. The campaign disclosure requirements applicable to local measures provided under Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code shall apply to this election.

(2) To transfer, for the benefit of the communities served by the district, in the absence of adequate consideration, any part of the assets of the district, including without limitation real property, equipment, and other fixed assets, current assets, and cash, relating to the operation of the district's health care facilities to one or more nonprofit corporations to operate and maintain the assets.

(A) A transfer of 50 percent or more of the district's assets, in sum or by increment, pursuant to this paragraph shall be deemed to be for the benefit of the communities served by the district only if all of the following occur:

(i) The transfer agreement and all arrangements necessary thereto are fully discussed in advance of the district board decision to transfer the assets of the district in at least five properly noticed open and public meetings in compliance 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, and Section 32106.

(ii) The transfer agreement provides that the hospital district shall approve all initial board members of the nonprofit corporation and any subsequent board members as may be specified in the transfer agreement.

(iii) The transfer agreement provides that all assets transferred to the nonprofit corporation, and all assets accumulated by the corporation during the term of the transfer agreement arising out of or from the operation of the transferred assets, are to be transferred back to the district upon termination of the transfer agreement, including any extension of the transfer agreement.

(iv) The transfer agreement commits the nonprofit corporation to operate and maintain the district's health care facilities and its assets for the benefit of the communities served by the district.

(v) The transfer agreement requires that any funds received from the district at the outset of the agreement or any time thereafter during the term of the agreement be used only to reduce district indebtedness, to acquire needed equipment for the district health care facilities, to operate, maintain, and make needed capital improvements to the district's health care facilities, to provide supplemental health care services or facilities for the communities served by the district, or to conduct other activities that would further a valid public purpose if undertaken directly by the district.

(B) A transfer of 33 percent or more but less than 50 percent of the district's assets, in sum or by increment, pursuant to this paragraph shall be deemed to be for the benefit of the communities served by the district only if both of the following occur:

(i) The transfer agreement and all arrangements necessary thereto are fully discussed in advance of the district board decision to transfer the assets of the district in at least two properly noticed open and public meetings in compliance 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), and Section 32106.

(ii) The transfer agreement meets all of the requirements of clauses (ii) to (v), inclusive, of subparagraph (A).

(C) A transfer of 10 percent or more but less than 33 percent of the district's assets, in sum or by increment, pursuant to this paragraph shall be deemed to be for the benefit of the communities served by the district only if both of the following occur:

(i) The transfer agreement and all arrangements necessary thereto are fully discussed in advance of the district board decision to transfer the assets of the district in at least two properly noticed open and public meetings in compliance 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), and Section 32106.

(ii) The transfer agreement meets all of the requirements of (iii) to (v), inclusive, of subparagraph (A).

(D) Before the district transfers, pursuant to this paragraph, 50 percent or more of the district's assets to one or more nonprofit corporations, in sum or by increment, the elected board shall, by resolution, submit to the voters of the district a measure proposing the transfer. The measure shall be placed on the ballot of a special election held upon the request of the district or the ballot of the next regularly scheduled election occurring at least 88 days after the resolution of the board. If a majority of the voters voting on the measure vote in its favor, the transfer shall be approved. The campaign disclosure requirements applicable to local measures provided under Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code shall apply to this election.

(E) Notwithstanding the other provisions of this paragraph, a hospital district shall not transfer any portion of its assets to a private nonprofit organization that is owned or controlled by a religious creed, church, or sectarian denomination in the absence of adequate consideration.

(3) If the district board has previously transferred less than 50 percent of the district's assets pursuant to this subdivision, before any additional assets are transferred the board shall hold a public hearing and shall make a public determination that the additional assets to be transferred will not, in combination with any assets previously transferred, equal 50 percent or more of the total assets of the district.

(4) The amendments to this subdivision made during the 1991–92 Regular Session, and the amendments made to this subdivision and to Section 32126 made during the 1993–94 Regular Session, shall only apply to transfers made on or after the effective dates of the acts amending this subdivision. The amendments to this subdivision made during those sessions shall not apply to any of the following:

(A) A district that has discussed and adopted a board resolution, prior to September 1, 1992, that authorizes the development of a business plan for an integrated delivery system.

(B) A lease agreement, transfer agreement, or both between a district and a nonprofit corporation that were in full force and effect as of September 1, 1992, for as long as that lease agreement, transfer agreement, or both remain in full force and effect.

(5) Notwithstanding paragraph (4), if substantial amendments are proposed to be made to a transfer agreement described in subparagraph (A) or (B) of paragraph (4), the amendments shall be fully discussed in advance of the district board's decision to adopt the

amendments in at least two properly noticed open and public meetings in compliance with Section 32106 and the Ralph M. Brown Act, (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(6) Notwithstanding paragraphs (4) and (5), a transfer agreement described in subparagraph (A) or (B) of paragraph (4) that provided for the transfer of less than 50 percent of a district's assets shall be subject to the requirements of subdivision (p) of Section 32121 when subsequent amendments to that transfer agreement would result in the transfer, in sum or by increment, of 50 percent or more of a district's assets to the nonprofit corporation.

(7) For purposes of this subdivision, a "transfer" means the transfer of ownership of the assets of a district. A lease of the real property or the tangible personal property of a district shall not be subject to this subdivision except as specified in Section 32121.4 and as required under Section 32126.

(8) Districts that request a special election pursuant to paragraph (1) or (2) shall reimburse counties for the costs of that special election as prescribed pursuant to Section 10520 of the Elections Code.

(9) Nothing in this section, including subdivision (j), shall be construed to permit a local district to obtain or be issued a single consolidated license to operate a separate physical plant as a skilled nursing facility or an intermediate care facility that is not located within the boundaries of the district.

(10) A transfer of any of the assets of a district to one or more nonprofit corporations to operate and maintain the assets shall not be required to meet paragraphs (1) to (9), inclusive, of this subdivision if all of the following conditions apply at the time of the transfer:

(A) The district has entered into a loan that is insured by the State of California under Chapter 1 (commencing with Section 129000) of Part 6 of Division 107.

(B) The district is in default of its loan obligations, as determined by the Office of Statewide Health Planning and Development.

(C) The Office of Statewide Health Planning and Development and the district, in their best judgment, agree the transfer of some or all of the assets of the district to a nonprofit corporation or corporations is necessary to cure the default, and will obviate the need for foreclosure. This cure of default provision shall be applicable prior to the office foreclosing on district hospital assets. After the office has foreclosed on district hospital assets, or otherwise taken possession in accordance with law, the office may exercise all of its powers to deal with and dispose of hospital property.

(D) The transfer and all arrangements necessary thereto are discussed in advance of the transfer in at least one properly noticed open and public meeting in compliance 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 and Section 32106. The meeting

referred to in this paragraph shall be noticed and held within 90 days of notice in writing to the district by the office of an event of default. If the meeting is not held within this 90-day period, the district shall be deemed to have waived this requirement to have a meeting.

(11) If a transfer under paragraph (10) is a lease, the lease shall provide that the assets shall revert to the district at the conclusion of the leasehold interest. If the transfer is a sale, the proceeds shall be used first to retire the obligation insured by the office, then to retire any other debts of the district. After providing for debts, any remaining funds shall revert to the district.

(q) To contract for bond insurance, letters of credit, remarketing services, and other forms of credit enhancement and liquidity support for its bonds, notes, and other indebtedness and to enter into reimbursement agreements, monitoring agreements, remarketing agreements, and similar ancillary contracts in connection therewith.

(r) To establish, maintain, operate, participate in, or manage capitated health care plans, health maintenance organizations, preferred provider organizations, and other managed health care systems and programs properly licensed by the Department of Insurance or the Department of Corporations, at any location within or without the district for the benefit of residents of communities served by the district. However, that activity shall not be deemed to result in or constitute the giving or lending of the district's credit, assets, surpluses, cash, or tangible goods to, or in aid of, any person, association, or corporation in violation of Section 6 of Article XVI of the California Constitution.

Nothing in this section shall authorize activities that corporations and other artificial legal entities are prohibited from conducting by Section 2400 of the Business and Professions Code.

Any agreement to provide health care coverage that is a health care service plan, as defined in subdivision (f) of Section 1345, shall be subject to the provisions of Chapter 2.2 (commencing with Section 1340) of Division 2, unless exempted pursuant to Section 1343 or 1349.2.

A district shall not provide health care coverage for any employee of an employer operating within the communities served by the district, unless the Legislature specifically authorizes, or has authorized in this section or elsewhere, the coverage.

This section shall not authorize any district to contribute its facilities to any joint venture that could result in transfer of the facilities from district ownership.

(s) To provide health care coverage to members of the district's medical staff, employees of the medical staff members, and the dependents of both groups, on a self-pay basis.

(t) This section shall become operative on January 1, 2001.

SEC. 3. Section 32126 of the Health and Safety Code is amended to read:

32126. (a) The board of directors may provide for the operation and maintenance through tenants of the whole or any part of any hospital acquired or constructed by it pursuant to this division, and for that purpose may enter into any lease agreement that it believes will best serve the interest of the district. A lease entered into with one or more corporations for the operation of 50 percent or more of the district's hospital, or that is part of or contingent upon a transfer of 50 percent or more of the district's assets, in sum or by increment, as described in subdivision (p) of Section 32121, shall be subject to the requirements of subdivision (p) of Section 32121. Any lease for the operation of any hospital shall require the tenant or lessee to conform to and abide by Section 32128. No lease for the operation of an entire hospital shall run for a term in excess of 30 years. No lease for the operation of less than an entire hospital shall run for a term in excess of 10 years.

(b) Notwithstanding any other provision of law, a sublease, an assignment of an existing lease, or the release of a tenant or lessee from obligations under an existing lease in connection with an assignment of an existing lease shall not be subject to the requirements of subdivision (p) of Section 32121 so long as all of the following conditions are met:

(1) The sublease or assignment of the existing lease otherwise remains in compliance with subdivision (a).

(2) The district board determines that the total consideration that the district shall receive following the assignment or sublease, or as a result thereof, taking into account all monetary and other tangible and intangible consideration to be received by the district including, without limitation, all benefits to the communities served by the district, is no less than the total consideration that the district would have received under the existing lease.

(3) The existing lease was entered into on or before July 1, 1984, upon approval of the board of directors following solicitation and review of no less than five offers from prospective tenants.

(4) If substantial amendments are made to an existing lease in connection with the sublease or assignment of that existing lease, the amendments shall be fully discussed in advance of the district board's decision to adopt the amendments in at least two properly noticed open and public meetings in compliance with Section 32106 and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(c) This section shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2001, deletes or extends that date.

SEC. 4. Section 32126 is added to the Health and Safety Code, to read:

32126. (a) The board of directors may provide for the operation and maintenance through tenants of the whole or any part of any hospital acquired or constructed by it pursuant to this division, and

for that purpose may enter into any lease agreement that it believes will best serve the interest of the district. A lease entered into with one or more nonprofit corporations for the operation of 50 percent or more of the district's hospital, or that is part of or contingent upon a transfer of 50 percent or more of the district's assets, in sum or by increment, as described in subdivision (p) of Section 32121 shall be subject to the requirements of subdivision (p) of Section 32121. Any lease for the operation of any hospital shall require the tenant or lessee to conform to and abide by Section 32128. No lease for the operation of an entire hospital shall run for a term in excess of 30 years. No lease for the operation of less than an entire hospital shall run for a term in excess of 10 years.

(b) Notwithstanding any other provision of law, a sublease, an assignment of an existing lease, or the release of a tenant or lessee from obligations under an existing lease in connection with an assignment of an existing lease shall not be subject to the requirements of subdivision (p) of Section 32121 so long as all of the following conditions are met:

(1) The sublease or assignment of the existing lease otherwise remains in compliance with subdivision (a).

(2) The district board determines that the total consideration that the district shall receive following the assignment or sublease, or as a result thereof, taking into account all monetary and other tangible and intangible consideration to be received by the district including, without limitation, all benefits to the communities served by the district, is no less than the total consideration that the district would have received under the existing lease.

(3) The existing lease was entered into on or before July 1, 1984, upon approval of the board of directors following solicitation and review of no less than five offers from prospective tenants.

(4) If substantial amendments are made to an existing lease in connection with the sublease or assignment of that existing lease, the amendments shall be fully discussed in advance of the district board's decision to adopt the amendments in at least two properly noticed open and public meetings in compliance with Section 32106 and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(c) This section shall become operative on January 1, 2001.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to permit, as soon as possible, the more efficient transfer of local health care district assets, it is necessary that this act take effect immediately.

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CHAPTER 19

An act to amend Sections 6602, 6609.1, 6609.2, and 6609.3 of, to add Sections 6601.3, 6601.5, and 6602.5 to, and to add and repeal Section 6604.1 of, the Welfare and Institutions Code, relating to sexually violent predators, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 14, 1998. Filed with Secretary of State April 14, 1998.]

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

SECTION 1. Section 6601.3 is added to the Welfare and Institutions Code, to read:

6601.3. The Board of Prison Terms may order that a person referred to the State Department of Mental Health pursuant to subdivision (b) of Section 6601 remain in custody for no more than 45 days for full evaluation pursuant to subdivisions (c) to (h), inclusive, of Section 6601, unless his or her scheduled date of release falls more than 45 days after referral.

SEC. 2. Section 6601.5 is added to the Welfare and Institutions Code, to read:

6601.5. In cases where an inmate's parole or temporary parole hold pursuant to Section 6601.3 will expire before a probable cause hearing is conducted pursuant to Section 6602, the agency bringing the petition may request an urgency review pursuant to this section. Upon that request, a judge of the superior court shall review the petition and determine whether the petition states or contains sufficient facts that, if true, would constitute probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior upon his or her release. If the judge determines that the petition, on its face, supports a finding of probable cause, the judge shall order that the person be detained in a secure facility until a hearing can be held pursuant to Section 6602. The probable cause hearing provided for in Section 6602 shall be held within 10 calendar days of the date of the order issued by the judge pursuant to this section.

SEC. 3. Section 6602 of the Welfare and Institutions Code is amended to read:

6602. A judge of the superior court shall review the petition and shall determine whether there is probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior upon his or her release. The person named in the petition shall be entitled to assistance of counsel at the probable cause hearing. If the judge determines that there is not probable cause, he or she shall dismiss the petition and any person subject to parole shall report to parole. If the judge determines that

there is probable cause, the judge shall order that the person remain in custody in a secure facility until a trial is completed and shall order that a trial be conducted to determine whether the person is, by reason of a diagnosed mental disorder, a danger to the health and safety of others in that the person is likely to engage in acts of sexual violence upon his or her release from the jurisdiction of the Department of Corrections or other secure facility.

SEC. 4. Section 6602.5 is added to the Welfare and Institutions Code, to read:

6602.5. No person may be placed in a state hospital pursuant to the provisions of this article until there has been a determination pursuant to Section 6601.3 or 6602 that there is probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior.

The State Department of Mental Health shall identify each person for whom a petition pursuant to this article has been filed who is in a state hospital on or after January 1, 1998, and who has not had a probable cause hearing pursuant to Section 6602. The State Department of Mental Health shall notify the court in which the petition was filed that the person has not had a probable cause hearing. Copies of the notice shall be provided by the court to the attorneys of record in the case. Within 30 days of notice by the State Department of Mental Health, the court shall either order the person removed from the state hospital and returned to local custody or hold a probable cause hearing pursuant to Section 6602.

SEC. 5. Section 6604.1 is added to the Welfare and Institutions Code, to read:

6604.1. (a) The two-year term of commitment provided for in Section 6604 shall commence on the date upon which the court issues the initial order of commitment pursuant to that section. The two-year term shall not be reduced by any time spent in a secure facility prior to the order of commitment. For subsequent extended commitments, the term of commitment shall be from the date of the termination of the previous commitment.

(b) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 1999, deletes or extends that date.

SEC. 6. Section 6609.1 of the Welfare and Institutions Code is amended to read:

6609.1. (a) When the State Department of Mental Health is considering a recommendation to the court for community outpatient treatment for any person committed as a sexually violent predator, it shall notify the sheriff or chief of police, or both, and the district attorney, who has jurisdiction over the community in which the person may be released. The notice shall be given at least 15 days prior to the department's submission of that recommendation to the court and shall include the name of the person who is scheduled to

be released and the community in which civil commitment was established.

(b) When the State Department of Mental Health is considering a recommendation not to pursue recommitment of any person committed as a sexually violent predator, it shall provide written notice of that release to the sheriff or police chief, or both, and to the district attorney, who has jurisdiction over the community in which civil commitment was established. The notice shall be made at least 15 days prior to the date on which the notification is to be forwarded from the department to the court that will consider the department's recommendation not to pursue the extension of the civil commitment.

Those agencies receiving the notice referred to in this subdivision shall have 15 days from receipt of the notice to provide written comment to the department regarding the impending release. Those comments shall be considered by the department, which may modify its decision regarding the community in which the person is scheduled to be released, based on those comments.

(c) If the court orders the immediate release of a sexually violent predator, the department shall notify the sheriff or chief of police, or both, and the district attorney, who has jurisdiction over the community in which the person is scheduled to be released at the time of release.

(d) The notice required by this section shall be made whether or not a request has been made pursuant to Section 6609.

(e) The time limits imposed by this section are not applicable where the release date of a sexually violent predator has been advanced by a judicial or administrative process or procedure that could not have reasonably been anticipated by the State Department of Mental Health and where, as the result of the time adjustments, there is less than 30 days remaining on the commitment before the inmate's release, but notice shall be given as soon as practicable. In no case shall notice required by this section to the appropriate agency be later than the day of release. If, after the 45-day notice is given to law enforcement and to the district attorney relating to an out-of-county placement, there is change of county placement, notice to the ultimate county of placement shall be made upon the determination of the county of placement.

SEC. 7. Section 6609.2 of the Welfare and Institutions Code is amended to read:

6609.2. (a) When any sheriff or chief of police is notified by the State Department of Mental Health of its intention to make a recommendation to the court concerning the disposition of a sexually violent predator pursuant to subdivision (a) or (b) of Section 6609.1, that sheriff or chief of police may notify any person designated by the sheriff or chief of police as an appropriate recipient of the notice.

(b) A law enforcement official authorized to provide notice pursuant to this section, and the public agency or entity employing

the law enforcement official, shall not be liable for providing or failing to provide notice pursuant to this section.

SEC. 8. Section 6609.3 of the Welfare and Institutions Code is amended to read:

6609.3. At the time a notice is sent pursuant to subdivision (a) or (b) of Section 6609.1, the sheriff, chief of police, or district attorney so notified shall also send a notice to persons described in Section 679.03 of the Penal Code who have requested a notice, informing those persons of the fact that the person who committed the sexually violent offense may be released, together with information identifying the court that will consider the conditional or unconditional release. When a person is approved by the court to be conditionally released, notice of the community in which the person is scheduled to reside shall also be given only if it is (1) in the county of residence of a witness, victim, or family member of a victim who has requested notice, or (2) within 25 miles of the actual residence of a witness, victim, or family member of a victim who has requested notice. If, after providing the witness, victim, or next of kin with the notice, there is any change in the release status or the community in which the person is to reside, the sheriff, chief of police, or district attorney shall provide the witness, victim, or next of kin with the revised information.

In order to be entitled to receive the notice set forth in this section, the requesting party shall keep the sheriff, chief of police, and district attorney who were notified under Section 679.03 of the Penal Code, informed of his or her current mailing address.

SEC. 9. The Legislature finds and declares that Section 3 of this act, which amends Section 6602 of the Welfare and Institutions Code, does not constitute a change in, but is declaratory of, existing law and consistent with current practice.

SEC. 10. The Legislature finds and declares that the provisions of Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code establish a civil mental health commitment for a period of two years for persons found to be sexually violent predators and that, consistent with a civil mental health commitment, credits that may reduce a term of imprisonment are not applicable. Accordingly, the Legislature finds and declares that Section 5 of this act, which adds Section 6604.1 to the Welfare and Institutions Code, does not constitute a change in, but is declaratory of, existing law.

SEC. 11. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide immediate protection to the public from sexually violent predators who will be released in the near future, it is necessary that this act take effect immediately.

CHAPTER 20

An act to amend Section 657 of the Business and Professions Code, to add Section 1371.22 to the Health and Safety Code, and to add Section 10126.5 to the Insurance Code, relating to health care, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 14, 1998. Filed with Secretary of State April 14, 1998.]

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

SECTION 1. Section 657 of the Business and Professions Code is amended to read:

657. (a) The Legislature finds and declares all of the following:

(1) Californians spend more than one hundred billion dollars ($100,000,000,000) annually on health care.

(2) In 1994, an estimated 6.6 million of California's 32 million residents did not have any health insurance and were ineligible for Medi-Cal.

(3) Many of California's uninsured cannot afford basic, preventative health care resulting in these residents relying on emergency rooms for urgent health care, thus driving up health care costs.

(4) Health care should be affordable and accessible to all Californians.

(5) The public interest dictates that uninsured Californians have access to basic, preventative health care at affordable prices.

(b) To encourage the prompt payment of health or medical care claims, health care providers are hereby expressly authorized to grant discounts in health or medical care claims when payment is made promptly within time limits prescribed by the health care providers or institutions rendering the service or treatment.

(c) Notwithstanding any provision in any health care service plan contract or insurance contract to the contrary, health care providers are hereby expressly authorized to grant discounts for health or medical care provided to any patient the health care provider has reasonable cause to believe is not eligible for, or is not entitled to, insurance reimbursement, coverage under the Medi-Cal program, or coverage by a health care service plan for the health or medical care provided. Any discounted fee granted pursuant to this section shall not be deemed to be the health care provider's usual, customary, or

reasonable fee for any other purposes, including, but not limited to, any health care service plan contract or insurance contract.

(d) "Health care provider," as used in this section, means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act, or licensed pursuant to Chapter 2.5 (commencing with Section 1440) of Division 2 of the Health and Safety Code; and any clinic, health dispensary, or health facility, licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

SEC. 2. Section 1371.22 is added to the Health and Safety Code, immediately following Section 1371.2, to read:

1371.22. If a contract between a health care service plan and a provider requires that the provider accept, as payment from the plan, the lowest payment rate charged by the provider to any patient or third party, this contract provision shall not be deemed to apply to, or take into consideration, any cash payments made to the provider by individual patients who do not have any private or public form of health care coverage for the service rendered by the provider, as described in subdivision (c) of Section 657 of the Business and Professions Code. This section shall apply to a provider contract that is issued, amended, or renewed on or after the effective date of this section.

SEC. 3. Section 10126.5 is added to the Insurance Code, immediately following Section 10126, to read:

10126.5. If a disability insurance policy between an insurer that covers hospital, medical, or surgical expenses and a provider requires that the provider accept, as payment from the insurer, the lowest payment rate charged by the provider to any patient or third party, this policy provision shall not be deemed to apply to, or take into consideration, any cash payments made to the provider by individual patients who do not have any private or public form of health care coverage for the service rendered by the provider, as described in subdivision (c) of Section 657 of the Business and Professions Code. This section shall apply to a provider contract that is issued, amended, or renewed on or after the effective date of this section.

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

In order to expedite the delivery of health care services to uninsured persons, it is necessary that this act take effect immediately.

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CHAPTER 21

An act to amend Sections 18903, 19056.5, 19141, 19142, 19702, 19786, 19798, 19815.41, 19816.2, 19817, 19841, 19994, 19994.1, 19994.2, 19997, 19997.3, 19997.4, 19997.5, 19997.6, 19997.7, 19997.8, 19997.11, 19997.13, and 22822 of, to add Sections 18523.1, 19170.1, 19818.7, 19818.11, and 22955 to, and to add Article 2.1 (commencing with Section 21078) to Chapter 12 of Part 3 of Division 5 of Title 2 of, the Government Code, and to add Section 10295.1 to the Public Contract Code, relating to state employees, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 14, 1998. Filed with Secretary of State April 15, 1998.]

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

SECTION 1. The Legislature finds and declares that the purpose of Section 2 is to adopt an agreement pursuant to Section 3517 of the Government Code entered into by the state employer and recognized employee organizations to make any necessary statutory changes in health, retirement, salary, or other benefits.

SEC. 2. The provisions of the following memorandum of understanding, prepared pursuant to Section 3517.5 of the Government Code, and entered into by the state employer and State Bargaining Unit 6, California Correctional Peace Officers Association, and that requires the expenditure of funds, are hereby approved for the purposes of Section 3517.6 of the Government Code.

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. Section 18523.1 is added to the Government Code, to read:

18523.1. (a) Notwithstanding Section 18523, this section shall only apply to state employees in State Bargaining Unit 6.

(b) "Class" means a group of positions sufficiently similar with respect to duties and responsibilities that the same title may reasonably and fairly be used to designate each position allocated to the class and that substantially the same tests of fitness may be used and that substantially the same minimum qualifications may be required and that the same schedule of compensation may be made to apply with equity.

(c) The board may also establish "broadband" classes for which the same general title may be used to designate each position allocated to the class and which may include more than one level or more than one specialty area within the same general field or work.

In addition to the minimum qualifications for each broadband class, other job-related qualifications may be required for particular positions within the class. When the board establishes a broadband class, these levels and specialty areas shall be described in the class specification, and the board shall specify any instances in which these levels and speciality areas are to be treated as separate classes for purposes of applying other provisions of law.

SEC. 5. Section 18903 of the Government Code is amended to read:

18903. (a) (1) For each class there shall be maintained a general reemployment list consisting of the names of all persons who have occupied positions with probationary or permanent status in the class and who have been legally laid off or demoted in lieu of layoff.

(2) Notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 5 or 6. For each class there shall be maintained a general reemployment list consisting of the names of all persons who have occupied positions with probationary or permanent status in the class and who have been legally laid off, demoted in lieu of layoff, or transferred in lieu of layoff.

(b) Within one year from the date of his or her resignation in good standing, or his or her voluntary demotion, the name of an employee who had probationary or permanent status may be placed on the general reemployment list with the consent of the appointing power and the board. The general reemployment list may also contain the names of persons placed thereon by the board in accordance with other provisions of this part.

SEC. 6. Section 19056.5 of the Government Code is amended to read:

19056.5. (a) Notwithstanding any other provision in this part and except as provided in subdivision (b), if the appointment is to be made from a general reemployment list, the names of the three persons with the highest standing on the list shall be certified to the appointing power.

(b) Notwithstanding subdivision (a), this subdivision shall apply only to state employees in State Bargaining Unit 6. If the appointment is to be made from a general reemployment list, the name of the person with the highest standing on the list shall be certified to the appointing power.

SEC. 7. Section 19141 of the Government Code is amended to read:

19141. This section applies only to a permanent employee, or an employee who previously had permanent status and who, since that permanent status, has had no break in the continuity of his or her state service due to a permanent separation. As used in this section, "former position" is defined as in Section 18522, or, if the appointing power to which reinstatement is to be made and the employee agree, a vacant position in any department, commission, or state agency for which he or she is qualified at substantially the same level.

Within the periods of time specified below, an employee who vacates a civil service position to accept an appointment to an exempt position shall be reinstated to his or her former position at the termination either by the employee or appointing power of the exempt appointment, provided he or she (a) accepted the appointment without a break in the continuity of state service, and (b) requests in writing reinstatement of the appointing power of his or her former position within 10 working days after the effective date of the termination.

The reinstatement may be requested by the employee only within the following periods of time:

(a) At any time after the effective date of the exempt appointment if the employee was appointed under one of the following:

(1) Subdivision (a), (b), (c), (d), (e), (f), (g), or (m) of Section 4 of Article VII of the California Constitution.

(2) Section 2.1 of Article IX of the California Constitution.

(3) Section 22 of Article XX of the California Constitution.

(4) To an exempt position under the same appointing power as the former position even though a shorter period of time may be otherwise specified for that appointment.

(b) Within six months after the effective date of the exempt appointment if appointed under subdivision (h), (i), (k), or (*l*) of Section 4 of Article VII of the California Constitution.

(c) (1) Within four years after the effective date of an exempt appointment if appointed under any other authority.

An employee who vacates his or her civil service position to accept an assignment as a member, inmate, or patient helper under subdivision (j) of Section 4 of Article VII of the California Constitution shall not have a right to reinstatement.

An employee who is serving under an exempt appointment retains a right of reinstatement when he or she accepts an extension of that exempt appointment or accepts a new exempt appointment, provided the extension or new appointment is made within the specified reinstatement time limit and there is no break in the continuity of state service. The period for which that right is retained is for the period applicable to the extended or new exempt appointment as if that appointment had been made on the date of the initial exempt appointment.

When an employee exercises his or her right of reinstatement and returns to his or her former position, the service while under an exempt appointment shall be deemed to be time served in the former position for the purpose of determining his or her seniority and eligibility for merit salary increases.

If the termination of an exempt appointment is for a reason contained in Section 19997 and the employee does not have a right to reinstatement, he or she shall have his or her name placed on the

departmental and general reemployment lists for the class of his or her former position.

(2) Notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 5 or 6. Within four years after the effective date of an exempt appointment if appointed under any other authority.

An employee who vacates his or her civil service position to accept an assignment as a member, inmate, or patient helper under subdivision (j) of Section 4 of Article VII of the California Constitution shall not have a right to reinstatement.

An employee who is serving under an exempt appointment retains a right of reinstatement when he or she accepts an extension of that exempt appointment or accepts a new exempt appointment, provided the extension or new appointment is made within the specified reinstatement time limit and there is no break in the continuity of state service. The period for which that right is retained is for the period applicable to the extended or new exempt appointment as if that appointment had been made on the date of the initial exempt appointment.

When an employee exercises his or her right of reinstatement and returns to his or her former position, the service while under an exempt appointment shall be deemed to be time served in the former position for the purpose of determining his or her eligibility for merit salary increases.

If the termination of an exempt appointment is for a reason contained in Section 19997 and the employee does not have a right to reinstatement, he or she shall have his or her name placed on the departmental and general reemployment lists for the class of his or her former position.

SEC. 8. Section 19142 of the Government Code is amended to read:

19142. (a) Every person accepts and holds a position in the state civil service subject to mandatory reinstatement of another person.

(b) (1) Upon reinstatement of a person any necessary separations are effected under the provisions of Section 19997.3 governing layoff and demotion except that (A) an employee who is not to be separated from state service need not receive advance notification as provided in Section 19997.13, and (B) seniority shall not be counted as provided in Section 19997.3 when this would result in the layoff of the person who has the reinstatement right. Under such a circumstance, qualifying service in classes at substantially the same or higher salary level is the only state service that shall be counted for purposes of determining who is to be separated.

(2) Notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 5 or 6. Upon reinstatement of a person any necessary separations are effected under Section 19997.3 governing layoff and demotion except that an employee who

is not to be separated from state service need not receive advance notification as provided in Section 19997.13.

SEC. 9. Section 19170.1 is added to the Government Code, to read:

19170.1. (a) Notwithstanding Section 19170 for state employees in State Bargaining Unit 6, the board shall establish for each class the length of the probationary period. The probationary period which shall be served upon appointment shall be not less than six months nor more than two years.

(b) The board may provide by rule: (1) for increasing the length of individual probationary periods by adding thereto periods of time during which an employee, while serving as a probationer, is absent from his or her position; or (2) for requiring an additional period not to exceed the length of the original probationary period when a probationary employee returns after an extended period of absence and the remainder of the probationary period is insufficient to evaluate his or her current performance.

SEC. 10. Section 19702 of the Government Code is amended to read:

19702. (a) A person shall not be discriminated against under this part because of sex, race, religious creed, color, national origin, ancestry, marital status, physical disability, or mental disability. A person shall not be retaliated against because he or she has opposed any practice made an unlawful employment practice, or made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. For purposes of this article, "discrimination" includes harassment. This subdivision is declaratory of existing law.

(b) As used in this section, "physical disability" includes, but is not limited to, impairment of sight, hearing, or speech, or impairment of physical ability because of amputation or loss of function or coordination, or any other health impairment that requires special education or related services.

(c) As used in this section, "mental disability" includes, but is not limited to, any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(d) Notwithstanding subdivisions (b) and (c), if the definition of disability used in the Americans with Disabilities Act of 1990 (Public Law 101-336) would result in broader protection of the civil rights of individuals with a mental disability or physical disability, as defined in subdivision (b) or (c), then that broader protection shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of, the definitions in subdivisions (b) and (c). The definitions of subdivisions (b) and (c) shall not be deemed to refer to or include conditions excluded from the federal definition of "disability" pursuant to Section 511 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12211).

(e) If the board finds that a person has engaged in discrimination under this part, and it appears that this practice consisted of acts described in Section 243.4, 261, 262, 286, 288, 288a, or 289 of the Penal Code, the board, with the consent of the complainant, shall provide the local district attorney's office with a copy of its decision and order.

(f) (1) If the board finds that discrimination has occurred in violation of this part, the board shall issue and cause to be served on the appointing authority an order requiring the appointing authority to cause the discrimination to cease and desist and to take any action, including, but not limited to, hiring, reinstatement, or upgrading of employees, with or without backpay, and compensatory damages, which, in the judgment of the board, will effectuate the purposes of this part. Consistent with this authority, the board may establish rules governing the award of compensatory damages. The order shall include a requirement of reporting the manner of compliance.

(2) Notwithstanding paragraph (1), this paragraph shall apply only to state employees in State Bargaining Unit 6. If the board finds that discrimination has occurred in violation of this part, the board shall issue and cause to be served on the appointing authority an order requiring the appointing authority to cause the discrimination to cease and desist and to take any action, including, but not limited to, hiring, reinstatement, or upgrading of employees, with or without backpay, adding additional seniority, and compensatory damages, which, in the judgment of the board, will effectuate the purposes of this part. Consistent with this authority, the board may establish rules governing the award of compensatory damages. The order shall include a requirement of reporting the manner of compliance.

(g) Any person claiming discrimination within the state civil service may submit a complaint that shall be in writing and set forth the particulars of the alleged discrimination, the name of the appointing authority, the persons alleged to have committed the unlawful discrimination, and any other information that may be required by the board. The complaint shall be filed with the appointing authority or, in accordance with board rules, with the board itself.

(h) Complaints shall be filed within one year of the alleged unlawful discrimination or the refusal to act in accordance with this section, except that this period may be extended for not to exceed 90 days following the expiration of that year, if a person allegedly aggrieved by unlawful discrimination first obtained knowledge of the facts of the alleged unlawful discrimination after the expiration of one year from the date of its occurrence. Complaints of discrimination in adverse actions or rejections on probation shall be filed in accordance with Sections 19175 and 19575.

(i) When an employee of the appointing authority refuses, or threatens to refuse, to cooperate in the investigation of a complaint of discrimination, the appointing authority may seek assistance from the board. The board may provide for direct investigation or hearing

of the complaint, the use of subpoenas, or any other action which will effect the purposes of this section.

SEC. 11. Section 19786 of the Government Code is amended to read:

19786. (a) When a civil service employee has been reinstated after military service in accordance with Section 19780, and any question arises relative to his or her ability or inability for any reason arising out of the military service to perform the duties of the position to which he or she has been reinstated, the board shall, upon the request of the appointing power or of the employee, hear the matter and may on its own motion or at the request of either party take any and all necessary testimony of every nature necessary to a decision on the question.

(b) If the board finds that the employee is not able for any reason arising out of the military service to carry out the usual duties of the position he or she then holds, it shall order the employee placed in a position in which the board finds he or she is capable of performing the duties in the same class or a comparable class in the same or any other state department, bureau, board, commission, or office under this part and the rules of the board covering transfer of an employee from a position under the jurisdiction of one appointing power to a position under the jurisdiction of another appointing power, without the consent of the appointing powers, where a vacancy may be made available to him or her under this part and the rules of the board, but in no event shall the transfer constitute a promotion within the meaning of this part and the rules of the board.

(c) (1) If a layoff is made necessary to place a civil service employee in a position in the same class or a comparable class in accordance with this section, the layoff shall be made under Section 19997.3, provided that no civil service employee who was employed prior to September 16, 1940, shall be laid off as a result of the placing of an employee in the same class or a comparable class under this section.

(2) Notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 5 or 6. If a layoff is made necessary to place a civil service employee in a position in the same class or a comparable class in accordance with this section, the layoff shall be made under Section 19997.3.

(d) The board may order the civil service employee reinstated to the department, bureau, board, commission, or office from which he or she was transferred either upon request of the employee or the appointing power from which transferred. The reinstatement may be made after a hearing as provided in this section if the board finds that the employee is at the time of the hearing able to perform the duties of the position.

SEC. 12. Section 19798 of the Government Code is amended to read:

19798. In establishing order and subdivisions of layoff and reemployment, the board, when it finds past discriminatory hiring practices, shall by rule, adopt a process that provides that the composition of the affected work force will be the same after the completion of a layoff, as it was before the layoff procedure was implemented. This section does not apply to state employees in State Bargaining Unit 5 or 6.

SEC. 13. Section 19815.41 of the Government Code is amended to read:

19815.41. (a) Notwithstanding subdivision (e) of Section 19815.4, this section shall apply only to state employees in State Bargaining Unit 5 or 6.

(b) The director shall hold nonmerit statutory appeal hearings, subpoena witnesses, administer oaths, and conduct investigations in accordance with Department of Personnel Administration Rule 599.859 (b)(2).

(c) The director may, at his or her discretion, hold hearings, subpoena witnesses, administer oaths, or conduct investigations or appeals concerning other matters relating to the department's jurisdiction.

(d) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 14. Section 19816.2 of the Government Code is amended to read:

19816.2. Notwithstanding any other provision of this part, regulations and other provisions pertaining to the layoff or demotion in lieu of layoff of civil service employees that are established or agreed to by the department shall be subject to review by the State Personnel Board for consistency with merit employment principles as provided for by Article VII of the California Constitution. This section does not apply to state employees in State Bargaining Unit 5 or 6.

SEC. 15. Section 19817 of the Government Code is amended to read:

19817. This article applies only with respect to regulations that apply exclusively to state employees in State Bargaining Unit 5 or to state employees in State Bargaining Unit 6.

SEC. 16. Section 19818.7 is added to the Government Code, to read:

19818.7. (a) Notwithstanding Section 19818.6, this section shall apply only to state employees in State Bargaining Unit 6.

(b) The department shall administer the Personnel Classification Plan of the State of California including the allocation of every

position to the appropriate class in the classification plan. The allocation of a position to a class shall derive from and be determined by the ascertainment of the duties and responsibilities of the position and shall be based on the principle that all positions that meet the definition of a class pursuant to Section 18523.1 shall be included in the same class.

(c) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of the memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(d) A broadband project may not change the terms and conditions of employment covered by a memorandum of understanding entered into pursuant to the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1), unless there is a written agreement with respect to the project between the department and the recognized employee organization representing the affected employees.

SEC. 17. Section 19818.11 is added to the Government Code, to read:

19818.11. (a) This section shall apply only to state employees in State Bargaining Unit 6.

The department may, directly or through agreement or contract with one or more agencies, conduct demonstration classification, compensation, and related projects. "Demonstration project", for the purposes of this section, means a project that uses alternative classification, compensation, and other personnel management policies and procedures to determine if a change would result in cost savings, improved efficiency, or both cost savings and improved efficiency in the existing personnel management system.

(b) Nothing in this section shall infringe upon or conflict with the merit principles as embodied in Article VII of the California Constitution.

(c) The establishment of a demonstration classification, compensation, or related project shall not be limited by the lack of specific authority in this division or by the existence of any statute or regulation that is inconsistent with actions to be taken in the demonstration project.

(d) Prior to implementation of a demonstration project, the department shall adopt regulations specifying the impact of the project on employee status, compensation, benefits, and rights with regard to transfer, layoff, promotion, and demotion. These regulations are not subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), (Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500) of

Part 1 of Division 3), and shall automatically expire after five years from the date of adoption or at the end of the demonstration project, whichever is earlier. Nothing in this section shall affect the rights of employees included within demonstration projects, except those rights directly pertaining to the subject matter of the demonstration project.

(e) The department shall notify each house of the Legislature when a demonstration project is undertaken. The department shall also evaluate each project at its conclusion and notwithstanding Section 7550.5, shall prepare and submit a summary of the evaluation to each house of the Legislature that includes a discussion of the following:

(1) The purpose of the proposed demonstration project that specifically states the goals or objectives of the project.

(2) The cost projections and methods by which savings, if any, may be calculated.

(3) A definitive mechanism by which the value and success, if any, of the demonstration project may be quantified as feasible. This mechanism shall include specific numerical objectives that must be met or exceeded if a demonstration project is to be judged successful.

(f) A demonstration project may not change the terms and conditions of employment covered by a memorandum of understanding entered into pursuant to the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1), unless there is a written agreement with respect to the project between the department and the recognized employee organization representing the affected employees.

SEC. 18. Section 19841 of the Government Code is amended to read:

19841. (a) Notwithstanding Section 11030, whenever a state officer or employee is required by the appointing power because of a change in assignment, promotion, or other reason related to his or her duties to change his or her place of residence, the officer, agent, or employee shall receive his or her actual and necessary moving, traveling, lodging, and meal expenses incurred by him or her both before and after and by reason of the change of residence. The maximum allowances for these expenses shall be as follows: the costs of packing, transporting, and unpacking 11,000 pounds of household effects, traveling, lodging, and meal expenses for 60 days while locating a permanent residence, storage of household effects for 60 days, and additional miscellaneous allowances not in excess of two hundred dollars ($200). The maximum allowances may be exceeded where the director determines that the change of residence will result in unusual and unavoidable hardship for the officer or employee, and in those cases the director shall determine the maximum allowances to be received by the officer or employee.

(b) If a change of residence reasonably requires the sale of residence or the settlement of an unexpired lease, the officer or employee may be reimbursed for any of the following expenses:

(1) The settlement of the unexpired lease to a maximum of one year. Upon the date of surrender of the premises by the employee who is the lessee, the rights and obligations of the parties to the lease shall be as determined by Section 1951.2 of the Civil Code.

The state shall be absolved of responsibility for an unexpired lease if the department determines the employee knew or reasonably should have known that a transfer involving a physical move was imminent before entering into the lease agreement.

(2) In the event of residence sale, reimbursement for brokerage and other related selling fees or charges, as determined by regulations of the department, customarily charged for like services in the locality where the residence is located.

(c) This subdivision shall apply to state employees in State Bargaining Unit 5 or 6. If the change of residence is caused by a layoff, the application of this section shall be at the discretion of the department based upon the recommendation of the appointing power.

(d) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 19. Section 19994 of the Government Code is amended to read:

19994. (a) (1) When the state takes over and there is transferred to it a function from any other public agency, the department may determine the extent, if any, to which the employees employed by the other public agency on the date of transfer are entitled to have credited to them in the state civil service, seniority credits, accumulated sick leave, and accumulated vacation because of service with the former agency. Granting of seniority credit under this section is subject to review by the State Personnel Board pursuant to Section 19816.2.

(2) Notwithstanding paragraph (1), this paragraph shall apply only to state employees in State Bargaining Unit 5 or 6. When the state takes over and there is transferred to it a function from any other public agency, the department may determine the extent, if any, to which the employees employed by the other public agency on the date of transfer are entitled to have credited to them in the state civil service, seniority credits, accumulated sick leave, and accumulated vacation because of service with the former agency.

(b) The department shall limit that determination to the time any transferred employees were employed in the specific function or a

function substantially similar while in the former agency and the seniority credits and accumulated sick leave and accumulated vacation shall not exceed that to which each employee would be entitled if he or she had been continuously employed by the State of California. This section is applicable to any function heretofore transferred to the state, whether by state action or otherwise, as well as to any future transfers of a function to the state, whether by state action or otherwise.

SEC. 20. Section 19994.1 of the Government Code is amended to read:

19994.1. (a) An appointing power may transfer any employee under his or her jurisdiction: (1) to another position in the same class; or (2) from one location to another whether in the same position, or in a different position as specified above in (1) or in Section 19050.5.

(b) (1) When a transfer under this section or Section 19050.5 reasonably requires an employee to change his or her place of residence, the appointing power shall give the employee, unless the employee waives this right, a written notice of transfer 60 days in advance of the effective date of the transfer. Unless the employee waives this right, the appointing power shall provide to the employee 60 days prior to the effective date of the transfer a written notice setting forth in clear and concise language the reasons why the employee is being transferred.

(2) Notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 5 or 6. When a transfer under this section or Section 19050.5 reasonably requires an employee to change his or her place of residence, the appointing power shall give the employee, unless the employee waives this right, a written notice of transfer 60 days in advance of the effective date of the transfer unless the transfer is in lieu of layoff, in which case the notice shall be 30 days in advance of the effective date of the transfer. Unless the employee waives this right, the written notice shall set forth in clear and concise language the reasons why the employee is being transferred.

(c) If this section is in conflict with a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the memorandum of understanding requires the expenditure of funds, it shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 21. Section 19994.2 of the Government Code is amended to read:

19994.2. (a) (1) When there are two or more employees in a class and an involuntary transfer is required to a position in the same class, or an appropriate class as designated by the State Personnel Board, in a location that reasonably requires an employee to change his or her place of residence, the department may determine the methods by which employees in the class or classes involved are to

be selected for transfer. These methods may include seniority and other considerations.

(2) Notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 5 or 6. When there are two or more employees in a class and an involuntary transfer is required to a position in the same class, or an appropriate class as designated by the State Personnel Board, in a location that reasonably requires an employee to change his or her place of residence, the department may determine the methods by which employees in the class or classes involved are to be selected for transfer. These methods may include seniority and other considerations, including special skills.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 22. Section 19997 of the Government Code is amended to read:

19997. (a) Whenever it is necessary because of lack of work or funds, or whenever it is advisable in the interests of economy, to reduce the staff of any state agency, the appointing power may lay off employees pursuant to this article and department rule. All layoff provisions and procedures established or agreed to under this article shall be subject to State Personnel Board review pursuant to Section 19816.2.

(b) Notwithstanding subdivision (a), this subdivision shall apply to state employees in State Bargaining Unit 5 or 6. Whenever it is necessary because of lack of work or funds, or whenever it is advisable in the interests of economy, to reduce the staff of any state agency, the appointing power may lay off employees pursuant to this article and department rule.

SEC. 23. Section 19997.3 of the Government Code is amended to read:

19997.3. (a) (1) Layoff shall be made in accordance with the relative seniority of the employees in the class of layoff. In determining seniority scores, one point shall be allowed for each complete month of full-time state service regardless of when the service occurred. Department rules shall establish all of the following:

(A) The extent to which seniority credits may be granted for less than full-time service.

(B) The seniority credit to be granted for service in a class that has been abolished, combined, divided, or otherwise altered under the authority of Section 18802.

(C) The basis for determining the sequence of layoff whenever the class and subdivision of layoff includes employees whose service is less than full time.

(D) Any other matters as are necessary or advisable to the operation of this chapter.

(2) Notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 5 or 6. Layoff shall be made in accordance with the relative seniority of the employees in the class of layoff. In determining seniority scores, one point shall be allowed for each complete month of full-time state service regardless of when the service occurred. Department rules shall establish all of the following:

(A) The extent to which seniority credits may be granted for less than full-time service.

(B) The basis for determining the sequence of layoff whenever the class and subdivision of layoff includes employees whose service is less than full time.

(C) Any other matters as are necessary or advisable to the operation of this chapter.

(b) For professional, scientific, administrative, management, and executive classes, the department shall prescribe standards and methods by rule whereby employee efficiency shall be combined with seniority in determining the order of layoffs and the order of names on reemployment lists. These standards and methods may vary for different classes, and shall take into consideration the needs of state service and practice in private industry and other public employment.

(c) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding incurs either present or future costs, or requires the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 24. Section 19997.4 of the Government Code is amended to read:

19997.4. (a) For the purposes of determining seniority pursuant to paragraph (1) of subdivision (a) of Section 19997.3, the term "state service" shall include all service that is exempt from state civil service.

(b) Notwithstanding subdivision (a), this subdivision shall apply only to state employees in State Bargaining Unit 5. For the purposes of determining seniority pursuant to paragraph (2) of subdivision (a) of Section 19997.3, the term "state service" shall include service that is exempted from state civil service by subdivisions (e), (f), (g), (i), and (m) of Section 4 of Article VII of the California Constitution.

(c) Notwithstanding subdivision (a), this subdivision shall apply only to state employees in State Bargaining Unit 6. For the purposes of determining seniority pursuant to paragraph (2) of subdivision (a) of Section 19997.3, the term "state service" shall include service that is exempted from the state civil service by any of the following:

(1) Subdivision (e), (f), (g), (i), or (m) of Section 4 of Article VII of the California Constitution.

(2) Subdivision (a) of Section 4 of Article VII of the California Constitution if an employee provides to the appointing power a copy of his or her official employment history record by July 1, 1999, or within six months of appointment to the state civil service.

SEC. 25. Section 19997.5 of the Government Code is amended to read:

19997.5. (a) Separations that are necessary by reason of reinstatement of an employee or employees after recognized military service as provided for in Section 19780 shall be made by layoff. In making these separations, the regular method of determining the order of layoff shall be used unless this would result in the layoff of an employee who has been reinstated in the class and subdivision of layoff under Section 19780, and in the retention of an employee who was appointed in the class and subdivision of layoff during the time such a reinstated employee was on military leave. Under these circumstances, seniority shall not be counted as provided in Section 19997.3. Instead, service in the subdivision of layoff that qualifies under Section 19997.3 for credit is the only state service that shall be counted.

Whenever such a layoff results in the demotion to a lower class of an employee who has been reinstated after recognized military service as provided in Section 19780, the resulting layoff, if any, in the lower class shall be made as though that reinstated employee had been in that lower class at the time he or she went on military leave.

Any layoff occurring within one year after reinstatement of an employee after recognized military service shall be presumed to have been necessary by reason of reinstatement of an employee or employees under Section 19780 unless the department determines that the reason for layoff is clearly not related to the reinstatement.

(b) Notwithstanding subdivision (a), this subdivision shall apply to state employees in State Bargaining Unit 5 or 6. Separations that are necessary by reason of reinstatement of an employee or employees after recognized military service as provided for in Section 19780 shall be made by layoff. In making these separations, the regular method of determining the order of layoff shall be used.

SEC. 26. Section 19997.6 of the Government Code is amended to read:

19997.6. (a) A veteran, except a veteran who was reinstated from military leave, shall in the event of layoff receive seniority credit for recognized military service if the veteran entered the state service

after discharge, the end of the national emergency, or the end of the state military emergency.

(b) Seniority credit for recognized military service shall be computed as if it were service in the class to which the employee was first given permanent civil service or exempt appointment after his or her entry into the state service following recognized military service.

(c) Seniority credit for recognized military service shall not exceed one years' credit if the veteran had no state service prior to entering the military service.

(d) This section shall become operative on July 1, 1993.

(e) Notwithstanding subdivisions (a), (c), and (d), this subdivision shall apply to state employees in State Bargaining Unit 5 or 6. A veteran, except a veteran who was reinstated from military leave, shall in the event of layoff receive a maximum of one year's seniority credit for recognized military service if the veteran entered the state service after discharge, the end of the national emergency, or the end of the state military emergency. For purposes of this subdivision, "recognized military service" means service in a military campaign or expedition for which a medal was authorized by the government of the United States in accordance with Section 300.1 of Title 12 of the California Code of Regulations.

SEC. 27. Section 19997.7 of the Government Code is amended to read:

19997.7. (a) Employees in the class under consideration, up to the number of positions to be abolished or discontinued, shall be laid off in the order as determined under this part. As between two or more of these employees who have the same score, veterans shall have preference in retention. Other ties shall be resolved according to department rule that shall take into consideration other matters of record before names are drawn by lot.

(b) Notwithstanding subdivision (a), this subdivision shall apply to state employees in State Bargaining Unit 5 or 6. Employees in the class under consideration, up to the number of positions to be abolished or discontinued, shall be laid off in the order as determined under this part. As between two or more employees who have the same score, veterans shall have preference in retention. Other ties shall be determined by lot.

SEC. 28. Section 19997.8 of the Government Code is amended to read:

19997.8. (a) (1) In lieu of being laid off an employee may elect demotion to: (A) any class with substantially the same or a lower maximum salary in which he or she had served under permanent or probationary status, or (B) a class in the same line of work as the class of layoff, but of lesser responsibility, if such a class is designated by the department. Whenever a demotion requires a layoff in the elected class, the seniority score for the demoted employee shall be recomputed in that class. The appointing power shall inform the

employee in the notice of layoff of the classes to which he or she has the right to demote. To be considered for demotion in lieu of layoff an employee must notify his or her appointing power in writing of his or her election not later than five calendar days after receiving notice of layoff.

(2) Notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 5 or 6. In lieu of being laid off an employee may elect demotion to: (A) any class with substantially the same or a lower maximum salary in which he or she had served under permanent or probationary status, or (B) a class in the same class series as the class of layoff, but of lesser responsibility, or (C) a class in a related line of work as the class of layoff, but of lesser responsibility, if such a class is designated by the department. Whenever a demotion requires a layoff in the elected class, the seniority score for the demoted employee shall be recomputed in that class if necessary. The appointing power shall inform the employee in the notice of layoff of the classes to which he or she has the right to demote. To be considered for demotion in lieu of layoff an employee must notify his or her appointing power in writing of his or her election not later than five calendar days after receiving notice of layoff.

(b) Demotions in lieu of layoff, and layoffs resulting therefrom, shall be governed by this article and shall be made within the subdivisions approved by the department for this purpose. These subdivisions need not be the same as those used to determine the area of layoff under Section 19997.2.

(c) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 29. Section 19997.11 of the Government Code is amended to read:

19997.11. (a) (1) The names of employees to be laid off or demoted shall be placed upon the reemployment list for the subdivision, if such a subdivision was designated, upon the departmental reemployment list and upon the general reemployment list, for the class from which the employees were laid off or demoted. The department may also place these names upon the general reemployment list for any other appropriate classes as the department determines.

(2) Notwithstanding paragraph (1), this paragraph shall apply only to state employees in State Bargaining Unit 5. The names of employees to be laid off, demoted in lieu of layoff, or transferred in lieu of layoff shall be placed upon the reemployment list for the subdivision, if such a subdivision was designated, upon the

departmental reemployment list and upon the general reemployment list, for the class from which the employees were laid off, demoted in lieu of layoff, or transferred in lieu of layoff. The department may also place these names upon the general reemployment list for any other appropriate classes as the department determines.

(3) Notwithstanding paragraph (1), this paragraph shall apply only to state employees in State Bargaining Unit 6. The names of employees to be laid off, demoted in lieu of layoff, or transferred in lieu of layoff shall be placed upon the reemployment list for the subdivision, if such a subdivision was designated and upon the departmental reemployment list, for the class from which the employees were laid off, demoted in lieu of layoff, or transferred in lieu of layoff. The department shall also place such names upon the general reemployment list only for the entry level class within the employee's primary demotional pattern. This general reemployment list shall be a rule of one name.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 30. Section 19997.13 of the Government Code is amended to read:

19997.13. (a) (1) An employee compensated on a monthly basis shall be notified that he or she is to be laid off 30 days prior to the effective date of layoff and not more than 60 days after the date of the seniority computation. The notice of layoff shall be in writing and shall contain the reason or reasons for the layoff. An employee to be laid off may elect to accept this layoff prior to the effective date thereof.

(2) Notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 5 or 6. An employee compensated on a monthly basis shall be notified that he or she is to be laid off 30 days prior to the effective date of layoff. The notice of layoff shall be in writing and shall contain the reason or reasons for the layoff. An employee to be laid off may elect to accept this layoff prior to the effective date thereof.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 31. Article 2.1 (commencing with Section 21078) is added to Chapter 12 of Part 3 of Division 5 of Title 2 of the Government Code, to read:

Article 2.1. State Peace Officers' and Firefighters' Defined Contribution Plan

21078. (a) The State Peace Officers' and Firefighters' Defined Contribution Plan is hereby established for state peace officer and firefighter members in Bargaining Unit 6 that have become subject to this article by memorandum of understanding, as provided by Section 3517.5. The plan shall supplement the benefits provided by this part and shall be a qualified governmental plan, as prescribed by Section 401 of Title 26 of the United States Code.

(b) The plan may be provided to state peace officer or firefighter members who are either excluded from the definition of state employee in subdivision (c) of Section 3513, or are nonelected officers or employees of the executive branch of government and are not members of the civil service, and who supervise employees in a bargaining unit that is subject to this article, provided, however that the Department of Personnel Administration has approved their inclusion for coverage under this article.

(c) The board shall notify the Department of Personnel Administration when it is prepared to implement the plan.

(d) "Plan" for the purposes of this article means the State Peace Officers' and Firefighters' Defined Contribution Plan.

21078.1. (a) The State Peace Officers' and Firefighters' Defined Contribution Plan Fund is hereby established in the State Treasury to accept member and employer contributions. Notwithstanding Section 13340, this fund is continuously appropriated without regard to fiscal years for the purposes of this article.

(b) The cost of administering this article shall be paid solely from the members' individual accounts.

21078.2. (a) The contributions made by the employer, and the member if any, to the plan shall be credited to the member's individual account. The contributions made by the employer and the member to the plan shall be subject to the limitations prescribed by Sections 401(a)(17) and 415(c) of Title 26 of the United States Code.

(b) The member's individual account in this plan shall consist of the contributions made by the employer on his or her behalf, the contributions made by the member, if any, and any earnings attributed to investments made from the member's individual account.

(c) Notwithstanding the rate of interest payable on member contributions pursuant to any other provision of this part, the board, after deducting the costs of administering this article, shall credit the individual account of a member with interest at the net earnings rate compounded each June 30.

(d) Member contributions, if any are made, shall be considered as contributions "picked up" by the employer, as specified by Section 414(h)(2) of Title 26 of the United States Code.

(e) The plan shall permit members to roll over contributions to or from another qualified plan, in accordance with federal requirements.

(f) The board may adopt rules and regulations, as it deems necessary, to ensure that the plan complies with the requirements imposed on defined contribution plans for governmental employers by Title 26 of the United States Code.

(g) The board shall have exclusive control over the administration and the investment of the fund. The board shall operate under the prudent person rule in its investment strategy and adopt all of the safeguards and diversity specified in Article 6 (commencing with Section 20190) of Chapter 2.

21078.3. (a) The employer contribution for a member who participates in this plan shall be determined pursuant to a memorandum of understanding.

(b) The rate of contribution for a member who participates in this plan, if so required, shall be determined pursuant to a memorandum of understanding.

21078.4. (a) All contributions made to this plan shall be held in trust for the benefit of the members and their beneficiaries. These contributions shall remain in the member's individual account until his or her permanent separation from state service, death, or retirement.

(b) Upon permanent separation from employment, the member shall be entitled to receive a lump sum distribution of the contributions in his or her individual account, plus the accumulated earnings to the date of the distribution.

(c) A participating member who permanently transfers to another state bargaining unit shall no longer be entitled to receive the employer contribution. However, if he or she had been making member contributions, he or she may elect to continue to participate in this plan under the same rate of contribution.

(d) The board shall determine the necessary procedure under which the member's contributions may be rolled into or out of this plan.

(e) Upon the death of a member, the beneficiary, as defined in Section 20019, may elect to receive a lump sum distribution of the member's individual account or receive a monthly annuity. The death benefit is separate and distinct from any other preretirement death benefits the beneficiary is eligible to receive from the system on account of the member's death.

(f) Upon the member's retirement, the member shall elect the manner in which his or her individual account shall be distributed. In lieu of a lump sum payment, the member may elect to receive a monthly payment from his or her individual account, in a manner

approved by the board and subject to the limitations imposed by Sections 401(a)(9) and 401(a)(31) of Title 26 of the United States Code and any other applicable federal tax code requirements for maintaining the qualified plan status of this system. This monthly payment may be included with any other monthly allowance payable to the member for services rendered the system. However, monthly payments from this defined contribution plan shall not be subject to any cost-of-living adjustments prescribed in this part.

(g) The board may contract with an insurance, annuity, mutual fund, or any other qualified company to provide members with an opportunity to purchase an annuity from their accounts at the time of retirement.

(h) The distribution of the member's individual account to a participating member, or his or her beneficiary, shall be in a manner approved by the board and subject to the conditions and limitations imposed by Title 26 of the United States Code and any other applicable federal tax code requirements for maintaining the qualified plan status of this system.

SEC. 32. Section 22822 of the Government Code is amended to read:

22822. (a) Notwithstanding any other provision of this chapter, with respect to state officers and employees, a permanent intermittent employee, who has an appointment of more than six months and works at least half time, shall be eligible to enroll or register not to enroll for health benefits within 60 calendar days after having been credited with a minimum of 480 paid hours within one of two designated 6-month periods in a calendar year. To continue benefits, a permanent intermittent employee must be credited with a minimum of 480 paid hours in a designated 6-month period or 960 paid hours in two consecutive designated 6-month periods. For the purposes of this section, the designated 6-month periods are January 1 through June 30 and July 1 through December 31 of each calendar year.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of the memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 33. Section 22955 is added to the Government Code, to read:

22955. (a) Notwithstanding Sections 22953 and 22954, an employee in Bargaining Unit 6 who becomes a state member of the Public Employees' Retirement System after January 1, 1998, and who is included in the definition of state employee in subdivision (c) of Section 3513 shall not receive any portion of the employer's contribution payable for annuitants, pursuant to Sections 22953 and

22954, unless the employee is credited with 10 years of state service at the time of retirement.

(b) The percentage of employer's contribution amount payable for postretirement dental care benefits for an employee subject to this section shall be based on the funding provision of the plan and the member's completed years of state service at retirement as shown in the following table:

Credited Years Service	Percentage of Employer Contribution
10	50
11	55
12	60
13	65
14	70
15	75
16	80
17	85
18	90
19	95
20	100

(c) This section shall only apply to state employees who retire for service.

(d) Benefits provided to an employee subject to this section shall be applicable to all future state service.

(e) For purposes of this section, "state service" means service rendered as an employee or an appointed or elected officer of the state for compensation. In those cases where the state assumes or has assumed from a public agency a function and the related personnel, service rendered by that personnel for compensation as employees or appointed or elected officers of that local public agency shall not be credited, at retirement, as state service for the purposes of this section, unless the former employer has paid or agreed to pay the state agency the amount actuarially determined to equal the cost for any employee dental benefits which were vested at the time that the function and the related personnel were assumed by the state. For noncontracting local public agencies the state department shall certify the completed years of local agency service to be credited to the employee to the Public Employees' Retirement System at the time of separation for retirement.

(f) Whenever the state contracts to assume a local public agency function, completed years of service rendered by the personnel for compensation as employees or appointed or elected officers of the local public agency shall be credited as state service only upon a

finding by the Department of Finance that the contract contains a benefit factor sufficient to reimburse the state for the amount necessary to compensate the state fully for postretirement dental benefit costs for those personnel.

(g) This section shall not apply to employees of the California State University or the Legislature.

SEC. 34. Section 10295.1 is added to the Public Contract Code, to read:

10295.1. For employees in State Bargaining Unit 6, contracts entered into by the Department of Personnel Administration for employee benefits, occupational health and safety, or training services shall be exempt from the requirements set forth in Section 10295 and do not require the approval by the Department of General Services.

SEC. 35. (a) It is the intent of the Legislature that Section 19818.11 of the Government Code which permits the development and implementation of demonstration projects, also include provisions that address the ever increasing need to improve the delivery of health care benefits to employees located in rural areas of the state.

(b) The Legislature finds and declares both of the following:

(1) Historically, the delivery of health care in rural areas of the state has been costly, limited in coverage, and inconsistent.

(2) Participants in designing a demonstration project pursuant to Section 19818.11 of the Government Code should look toward achieving long-term, broad, and cost-effective coverage that can improve health care for both workers and their families.

SEC. 36. It is the intent of the Legislature that the Department of Personnel Administration shall endeavor to maintain appropriate compensation, benefits, and personnel policies under its statutory jurisdiction for supervisory correctional peace officers by considering factors that include, but are not limited to, the compensation, benefits, and personnel practices given to correctional peace officers in state government.

SEC. 37. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the provisions of this act relating to state employees may become effective at the earliest possible time, it is necessary that this act go into immediate effect.

CHAPTER 22

An act to add Section 1367.695 to the Health and Safety Code, and to add Section 10123.84 to the Insurance Code, relating to health care coverage.

[Approved by Governor April 16, 1998. Filed with Secretary of State April 17, 1998.]

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

SECTION 1. Section 1367.695 is added to the Health and Safety Code, immediately following Section 1367.69, to read:

1367.695. (a) The Legislature finds and declares that the unique, private, and personal relationship between women patients and their obstetricians and gynecologists warrants direct access to obstetrical and gynecological physician services.

(b) Commencing January 1, 1999, every health care service plan contract issued, amended, renewed, or delivered in this state, except a specialized health care service plan, shall allow an enrollee the option to seek obstetrical and gynecological physician services directly from a participating obstetrician and gynecologist or directly from a participating family practice physician and surgeon designated by the plan as providing obstetrical and gynecological services.

(c) In implementing this section, a health care service plan may establish reasonable provisions governing utilization protocols and the use of obstetricians and gynecologists, or family practice physicians and surgeons, as provided for in subdivision (b), participating in the plan network, medical group, or independent practice association, provided that these provisions shall be consistent with the intent of this section and shall be those customarily applied to other physicians and surgeons, such as primary care physicians and surgeons, to whom the enrollee has direct access, and shall not be more restrictive for the provision of obstetrical and gynecological physician services. An enrollee shall not be required to obtain prior approval from another physician, another provider, or the health care service plan prior to obtaining direct access to obstetrical and gynecological physician services, but the plan may establish reasonable requirements for the participating obstetrician and gynecologist or family practice physician and surgeon, as provided for in subdivision (b), to communicate with the enrollee's primary care physician and surgeon regarding the enrollee's condition, treatment, and any need for followup care.

(d) This section shall not be construed to diminish the provisions of Section 1367.69.

(e) The Department of Corporations shall report to the Legislature, on or before January 1, 2000, on the implementation of this section.

SEC. 2. Section 10123.84 is added to the Insurance Code, to read:

10123.84. (a) The Legislature finds and declares that the unique, private, and personal relationship between women patients and their obstetricians and gynecologists warrants direct access to obstetrical and gynecological physician services.

(b) Commencing January 1, 1999, every policy of disability insurance that covers hospital, medical, or surgical expenses, and that is issued, amended, delivered, or renewed in this state, shall allow a policyholder the option to seek obstetrical and gynecological physician services directly from an obstetrician and gynecologist or directly from a participating family practice physician and surgeon designated by the plan as providing obstetrical and gynecological services.

(c) In implementing this section, a disability insurer may establish reasonable provisions governing utilization protocols and the use of obstetricians and gynecologists or family practice physicians and surgeons, as provided for in subdivision (b), provided that these provisions shall be consistent with the intent of this section and shall be those customarily applied to other physicians and surgeons, including primary care physicians and surgeons, to whom the policyholder has direct access, and shall not be more restrictive for the provision of obstetrical and gynecological physician services. A policyholder shall not be required to obtain prior approval from another physician, another provider, or the insurer prior to obtaining direct access to obstetrical and gynecological physician services, but the insurer may establish reasonable requirements for the participating obstetrician and gynecologist or the family practice physician and surgeon, as provided in subdivision (b), to communicate with the policyholder's primary care physician regarding the policyholder's condition, treatment, and any need for followup care.

(d) This section shall not be construed to diminish the provisions of Section 10123.83.

(e) The Insurance Commissioner shall report to the Legislature, on or before January 1, 2000, on the implementation of 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 that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative

on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 23

An act to amend Section 1363 of the Health and Safety Code, relating to health care service plans.

[Approved by Governor April 16, 1998. Filed with Secretary of State April 17, 1998.]

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

SECTION 1. Section 1363 of the Health and Safety Code is amended to read:

1363. (a) The commissioner shall require the use by each plan of disclosure forms or materials containing information regarding the benefits, services, and terms of the plan contract as the commissioner may require, so as to afford the public, subscribers, and enrollees with a full and fair disclosure of the provisions of the plan in readily understood language and in a clearly organized manner. The commissioner may require that the materials be presented in a reasonably uniform manner so as to facilitate comparisons between plan contracts of the same or other types of plans. Nothing contained in this chapter shall preclude the commissioner from permitting the disclosure form to be included with the evidence of coverage or plan contract.

The disclosure form shall provide for at least the following information, in concise and specific terms, relative to the plan, together with additional information as may be required by the commissioner, in connection with the plan or plan contract:

(1) The principal benefits and coverage of the plan, including coverage for acute care and subacute care.

(2) The exceptions, reductions, and limitations that apply to the plan.

(3) The full premium cost of the plan.

(4) Any copayment, coinsurance, or deductible requirements that may be incurred by the member or the member's family in obtaining coverage under the plan.

(5) The terms under which the plan may be renewed by the plan member, including any reservation by the plan of any right to change premiums.

(6) A statement that the disclosure form is a summary only, and that the plan contract itself should be consulted to determine governing contractual provisions. On the first page of the disclosure form, a notice that conforms with all of the following conditions:

(A) States that the evidence of coverage discloses the terms and conditions of coverage and that the applicant has a right to view the evidence of coverage prior to enrollment. If the evidence of coverage is not combined with the disclosure form, the notice shall specify where the evidence of coverage can be obtained prior to enrollment.

(B) Includes a statement that the disclosure and the evidence of coverage should be read completely and carefully and that individuals with special health care needs should read carefully those sections that apply to them.

(C) Includes the plan's telephone number or numbers that may be used by an applicant to receive additional information about the benefits of the plan or a statement where the telephone number or numbers are located in the disclosure form.

(D) For individual contracts, and small group plan contracts as defined in Article 3.1 (commencing with Section 1357), the disclosure form shall state where the Health Plan Benefits and Coverage Matrix is located.

(E) Is printed in type no smaller than that used for the remainder of the disclosure form and is displayed prominently on the page.

(7) A statement as to when benefits shall cease in the event of nonpayment of the prepaid or periodic charge and the effect of nonpayment upon an enrollee who is hospitalized or undergoing treatment for an ongoing condition.

(8) To the extent that the plan permits a free choice of provider to its subscribers and enrollees, the statement shall disclose the nature and extent of choice permitted and the financial liability which is, or may be, incurred by the subscriber, enrollee, or a third party by reason of the exercise of that choice.

(9) A summary of the provisions required by subdivision (g) of Section 1373, if applicable.

(10) If the plan utilizes arbitration to settle disputes, a statement of that fact.

(11) A summary of, and a notice of the availability of, the process the plan uses to authorize or deny health care services under the benefits provided by the plan, pursuant to Section 1363.5.

(12) A description of any limitations on the patient's choice of primary care or specialty care physician based on service area and limitations on the patient's choice of acute care hospital care, subacute or transitional inpatient care, or skilled nursing facility.

(13) General authorization requirements for referral by a primary care physician to a specialty care physician.

(14) Conditions and procedures for disenrollment.

(b) (1) As of July 1, 1999, the commissioner shall require each plan offering a contract to an individual or small group to provide with the disclosure form for individual and small group plan contracts a uniform Health Plan Benefits and Coverage Matrix containing the plan's major provisions in order to facilitate comparisons between plan contracts. The uniform matrix shall include the following

category descriptions together with the corresponding copayments and limitations in the following sequence:

(A) Deductibles.
(B) Lifetime maximums.
(C) Professional services.
(D) Outpatient services.
(E) Hospitalization services.
(F) Emergency health coverage.
(G) Ambulance services.
(H) Prescription drug coverage.
(I) Durable medical equipment.
(J) Mental health services.
(K) Chemical dependency services.
(L) Home health services.
(M) Other.

(2) The following statement shall be placed at the top of the matrix in all capital letters in at least 10-point boldface type:

THIS MATRIX IS INTENDED TO BE USED TO HELP YOU COMPARE COVERAGE BENEFITS AND IS A SUMMARY ONLY. THE EVIDENCE OF COVERAGE AND PLAN CONTRACT SHOULD BE CONSULTED FOR A DETAILED DESCRIPTION OF COVERAGE BENEFITS AND LIMITATIONS.

(c) Nothing in this section shall prevent a plan from using appropriate footnotes or disclaimers to reasonably and fairly describe coverage arrangements in order to clarify any part of the matrix that may be unclear.

(d) All plans, solicitors, and representatives of a plan shall, when presenting any plan contract for examination or sale to an individual prospective plan member, provide the individual with a properly completed disclosure form, as prescribed by the commissioner pursuant to this section for each plan so examined or sold.

(e) In the case of group contracts, the completed disclosure form and evidence of coverage shall be presented to the contractholder upon delivery of the completed health care service plan agreement.

(f) Group contractholders shall disseminate copies of the completed disclosure form to all persons eligible to be a subscriber under the group contract at the time those persons are offered the plan. Where the individual group members are offered a choice of plans, separate disclosure forms shall be supplied for each plan available. Each group contractholder shall also disseminate or cause to be disseminated copies of the evidence of coverage to all subscribers enrolled under the group contract.

(g) In the case of conflicts between the group contract and the evidence of coverage, the provisions of the evidence of coverage shall be binding upon the plan notwithstanding any provisions in the

group contract which may be less favorable to subscribers or enrollees.

(h) In addition to the other disclosures required by this section, every health care service plan and any agent or employee of the plan shall, when presenting a plan for examination or sale to any individual purchaser or the representative of a group consisting of 25 or fewer individuals, disclose in writing the ratio of premium costs to health services paid for plan contracts with individuals and with groups of the same or similar size for the plan's preceding fiscal year. A plan may report that information by geographic area, provided the plan identifies the geographic area and reports information applicable to that geographic area.

(i) Subdivision (b) shall not apply to any coverage provided by a plan for the Medi-Cal program or the Medicare program pursuant to Title XVIII and Title XIX of the Social Security Act.

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 that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 24

An act to add Section 42283.2 to the Education Code, relating to schools.

[Approved by Governor April 27, 1998. Filed with Secretary of State April 28, 1998.]

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

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

(a) The Sierra Sands Unified School District is a large school district that serves pupils from a wide and varied geographic area. Within that district, Rand Elementary School has a pupil population of less than 30 pupils. Pupils, in kindergarten and grades 1 to 5, inclusive, who presently attend that school would have to travel long distances over hazardous terrain in order to attend other schools within the Sierra Sands Unified School District.

(b) In previous years the Sierra Sands Unified School District received considerable federal grants pursuant to Public Law 81-874, which subsidizes school districts serving military families. However, these federal grants have declined from one million six hundred thousand dollars ($1,600,000) in the 1974–75 fiscal year to eight hundred thirty-nine thousand dollars ($839,000) in the 1995–96 fiscal year, and are expected to decline even further to approximately seven hundred seventy-five thousand dollars ($775,000) in the 1996–97 fiscal year, and to continue to descend thereafter.

SEC. 2. Section 42283.2 is added to the Education Code, to read:

42283.2. (a) Notwithstanding any other provision of law, the Rand Elementary School shall be deemed a necessary small school, as defined in Section 42283. Notwithstanding any other provision of law, the Sierra Sands Unified School District is eligible to receive apportionments for the Rand Elementary School pursuant to Section 42282.

(b) If the amount of average daily attendance of the Rand Elementary School exceeds 100, then that school shall no longer be entitled to receive apportionments as a necessary small school.

SEC. 3. The Legislature finds and declares that, due to the unique fiscal circumstances of the Sierra Sands Unified School District that are set forth in Section 1 of this act, a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

CHAPTER 25

An act to amend Section 832.5 of the Penal Code, relating to peace officers.

[Approved by Governor April 29, 1998. Filed with Secretary of State April 29, 1998.]

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

SECTION 1. Section 832.5 of the Penal Code is amended to read:

832.5. (a) Each department or agency in this state that employs peace officers shall establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies, and shall make a written description of the procedure available to the public.

(b) Complaints and any reports or findings relating to these complaints shall be retained for a period of at least five years. All complaints retained pursuant to this subdivision may be maintained either in the officer's general personnel file or in a separate file designated by the department or agency as provided by department or agency policy, in accordance with all applicable requirements of

law. However, prior to any official determination regarding promotion, transfer, or disciplinary action by an officer's employing department or agency, the complaints described by subdivision (c) shall be removed from the officer's general personnel file and placed in separate file designated by the department or agency, in accordance with all applicable requirements of law.

(c) Complaints by members of the public that are determined by the peace officer's employing agency to be frivolous, as defined in Section 128.5 of the Code of Civil Procedure, or unfounded or exonerated, or any portion of a complaint that is determined to be frivolous, unfounded, or exonerated, shall not be maintained in that officer's general personnel file. However, these complaints shall be retained in other, separate files that shall be deemed personnel records for purposes of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and Section 1043 of the Evidence Code.

(1) Management of the peace officer's employing agency shall have access to the files described in this subdivision.

(2) Management of the peace officer's employing agency shall not use the complaints contained in these separate files for punitive or promotional purposes except as permitted by subdivision (f) of Section 3304 of the Government Code.

(3) Management of the peace officer's employing agency may identify any officer who is subject to the complaints maintained in these files which require counseling or additional training. However, if a complaint is removed from the officer's personnel file, any reference in the personnel file to the complaint or to a separate file shall be deleted.

(d) As used in this section, the following definitions apply:

(1) "General personnel file" means the file maintained by the agency containing the primary records specific to each officer's employment, including evaluations, assignments, status changes, and imposed discipline.

(2) "Unfounded" means that the investigation clearly established that the allegation is not true.

(3) "Exonerated" means that the investigation clearly established that the actions of the peace officer that formed the basis for the complaint are not violations of law or department policy.

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, the provisions of this act shall become operative

on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 26

An act to amend Section 10234 of the Business and Professions Code, relating to real estate.

[Approved by Governor April 29, 1998. Filed with Secretary of State April 29, 1998.]

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

SECTION 1. Section 10234 of the Business and Professions Code is amended to read:

10234. (a) Except as provided in subdivision (d), every real estate licensee who negotiates a loan secured by a trust deed on real property shall cause the trust deed to be recorded, naming as beneficiary the lender or his or her nominee (who shall not be the licensee or the licensee's nominee), with the county recorder of the county in which the real property is located prior to the time that any funds are disbursed, except when the lender has given written authorization for prior release.

(b) If funds are released on the lender's written authorization as described in subdivision (a), the trust deed shall be recorded, or delivered to the lender or beneficiary with a written recommendation that it be recorded forthwith, within 10 days following release.

(c) Every real estate licensee who sells, exchanges, or negotiates the sale or exchange of a real property sales contract or a promissory note secured by a trust deed on real property shall cause a proper assignment of the real property sales contract or trust deed to be executed and shall cause the assignment to be recorded, naming as assignee the purchaser or his or her nominee (who shall not be the licensee or the licensee's nominee), with the county recorder of the county in which the real property is located within 10 working days after the licensee or seller receives any funds from the buyer or after close of escrow; or shall deliver the real property sales contract or trust deed to the purchaser with a written recommendation that the assignment thereof be recorded forthwith.

(d) A trust deed may be recorded in the name of the real estate broker negotiating the loan if all of the following apply: (1) the lender or purchaser is any person or entity set forth in paragraph (1) of subdivision (c) of Section 10232, (2) the trust deed is recorded with the county recorder of the county in which the real property is located, and (3) the real property securing the loan as described in

the trust deed is not a dwelling as defined in Section 10240.2 or unimproved real property.

CHAPTER 27

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

[Approved by Governor April 29, 1998. Filed with Secretary of State April 29, 1998.]

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

SECTION 1. Notwithstanding any provision of the Elections Code to the contrary, a special general election only to fill the vacancy in the 9th Senate District may be conducted more than 180 days following the proclamation of the Governor in order to consolidate the special general election with the November 3, 1998, statewide general election.

This act is an urgency statute necessary for the immediate preservation of the public peace, health, or 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 special general election to fill the vacancy in the 9th Senate District may be consolidated with the November 3, 1998, statewide general election and thereby reduce the costs of that special general election, it is necessary that this act take immediate effect.

CHAPTER 28

An act relating to the Department of Corrections, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 29, 1998. Filed with Secretary of State April 29, 1998.]

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

SECTION 1. The sum of six million five hundred fifty-eight thousand dollars ($6,558,000) is hereby appropriated from the General Fund to the Department of Corrections for minor capital outlay projects to implement the statewide Disability Placement

Program and facility modifications to provide accessibility for disabled inmates.

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

The Department of Corrections has developed a program, including facility modifications, needed to provide appropriate housing and programming opportunities for inmates with disabilities. Construction of these improvements will assist in avoiding potentially more expensive court-ordered alternatives. To provide the funding needed to ensure the expedited construction of these modifications and full implementation of this program, it is necessary for this act to take effect immediately.

CHAPTER 29

An act to amend Section 6062 of the Business and Professions Code, relating to the State Bar of California, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 29, 1998. Filed with Secretary of State April 29, 1998.]

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

SECTION 1. Section 6062 of the Business and Professions Code is amended to read:

6062. (a) To be certified to the Supreme Court for admission, and a license to practice law, a person who has been admitted to practice law in a sister state, United States jurisdiction, possession, territory, or dependency the United States may hereafter acquire shall:

(1) Be of the age of at least 18 years.

(2) Be of good moral character.

(3) Have passed the general bar examination given by the examining committee. However, if that person has been an active member in good standing of the bar of the admitting sister state or United States jurisdiction, possession, or territory for at least four years immediately preceding the filing of his or her application to take the general bar examination, he or she may elect to take the Attorneys' Examination rather than the general bar examination. Attorneys admitted less than four years and attorneys admitted four years or more in another jurisdiction but who are not active members in good standing of their admitting jurisdiction must take the general bar examination administered to general applicants not admitted as attorneys in other jurisdictions.

(4) Have passed an examination in professional responsibility or legal ethics as the examining committee may prescribe.

(b) To be certified to the Supreme Court for admission, and a license to practice law, a person who has been admitted to practice law in a jurisdiction other than in a sister state, United States jurisdiction, possession, or territory shall:

(1) Be of the age of at least 18 years.

(2) Be of good moral character.

(3) Have passed the general bar examination given by the examining committee.

(4) Have passed an examination in professional responsibility or legal ethics as the examining committee may prescribe.

(c) The amendments to this section made at the 1997–98 Regular Session of the Legislature shall be applicable on and after January 1, 1997, and do not constitute a change in, but are declaratory of, existing law.

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

In order to permit the practice of law in California by a class of qualified applicants who were inadvertently disenfranchised by a technical error in statutory drafting, and in order for the Committee of Bar Examiners to continue to certify all qualified candidates for admission to the practice of law, it is necessary that this bill take effect immediately.

CHAPTER 30

An act to amend Section 44977 of, and to add Section 44978.1 to, the Education Code, relating to school employees.

[Approved by Governor April 29, 1998. Filed with Secretary of State April 29, 1998.]

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

SECTION 1. Section 44977 of the Education Code is amended to read:

44977. (a) During each school year, when a person employed in a position requiring certification qualifications has exhausted all available sick leave, including all accumulated sick leave, and continues to be absent from his or her duties on account of illness or accident for an additional period of five school months, whether or not the absence arises out of or in the course of the employment of the employee, the amount deducted from the salary due him or her for any of the additional five months in which the absence occurs shall

not exceed the sum that is actually paid a substitute employee employed to fill his or her position during his or her absence or, if no substitute employee was employed, the amount that would have been paid to the substitute had he or she been employed. The school district shall make every reasonable effort to secure the services of a substitute employee.

(b) For purposes of subdivision (a):

(1) The sick leave, including accumulated sick leave, and the five-month period shall run consecutively.

(2) An employee shall not be provided more than one five-month period per illness or accident. However, if a school year terminates before the five-month period is exhausted, the employee may take the balance of the five-month period in a subsequent school year.

(c) The governing board of every school district shall adopt a salary schedule for substitute employees. The salary schedule shall indicate a salary for a substitute for all categories or classes of certificated employees of the district.

(d) Excepting in a district the governing board of which has adopted a salary schedule for substitute employees of the district, the amount paid the substitute employee during any month shall be less than the salary due the employee absent from his or her duties.

(e) When a person employed in a position requiring certification qualifications is absent from his or her duties on account of illness for a period of more than five school months, or when a person is absent from his or her duties for a cause other than illness, the amount deducted from the salary due him or her for the month in which the absence occurs shall be determined according to the rules and regulations established by the governing board of the district. The rules and regulations shall not conflict with rules and regulations of the State Board of Education.

(f) Nothing in this section shall be construed so as to deprive any district, city, or city and county of the right to make any reasonable rule for the regulation of accident or sick leave or cumulative accident or sick leave without loss of salary for persons acquiring certification qualifications.

(g) This section shall be applicable whether or not the absence from duty is by reason of a leave of absence granted by the governing board of the employing district.

SEC. 2. Section 44978.1 is added to the Education Code, to read:

44978.1. When a certificated employee has exhausted all available sick leave, including accumulated sick leave, and continues to be absent on account of illness or accident for a period beyond the five-month period provided pursuant to Section 44977, and the employee is not medically able to resume the duties of his or her position, the employee shall, if not placed in another position, be placed on a reemployment list for a period of 24 months if the employee is on probationary status, or for a period of 39 months if the employee is on permanent status. When the employee is medically

able, during the 24- or 39-month period, the certificated employee shall be returned to employment in a position for which he or she is credentialed and qualified. The 24-month or 39-month period shall commence at the expiration of the five-month period provided pursuant to Section 44977.

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

CHAPTER 31

An act to add Section 1374.16 to the Health and Safety Code, and to add Section 14450.5 to the Welfare and Institutions Code, relating to health care.

[Approved by Governor April 30, 1998. Filed with Secretary of State April 30, 1998.]

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

SECTION 1. Section 1374.16 is added to the Health and Safety Code, to read:

1374.16. (a) Every health care service plan, except a specialized health care service plan, shall establish and implement a procedure by which an enrollee may receive a standing referral to a specialist. The procedure shall provide for a standing referral to a specialist if the primary care physician determines in consultation with the specialist, if any, and the plan medical director or his or her designee, that an enrollee needs continuing care from a specialist. The referral shall be made pursuant to a treatment plan approved by the health care service plan in consultation with the primary care physician, the specialist, and the enrollee, if a treatment plan is deemed necessary to describe the course of the care. A treatment plan may be deemed to be not necessary provided that a current standing referral to a specialist is approved by the plan or its contracting provider, medical group, or independent practice association. The treatment plan may limit the number of visits to the specialist, limit the period of time that the visits are authorized, or require that the specialist provide the

primary care physician with regular reports on the health care provided to the enrollee.

(b) Every health care service plan, except a specialized health care service plan, shall establish and implement a procedure by which an enrollee with a condition or disease that requires specialized medical care over a prolonged period of time and is life-threatening, degenerative, or disabling may receive a referral to a specialist or specialty care center that has expertise in treating the condition or disease for the purpose of having the specialist coordinate the enrollee's health care. The referral shall be made if the primary care physician, in consultation with the specialist or specialty care center if any, and the plan medical director or his or her designee determines that this specialized medical care is medically necessary for the enrollee. The referral shall be made pursuant to a treatment plan approved by the health care service plan in consultation with the primary care physician, specialist or specialty care center, and enrollee, if a treatment plan is deemed necessary to describe the course of care. A treatment plan may be deemed to be not necessary provided that the appropriate referral to a specialist or specialty care center is approved by the plan or its contracting provider, medical group, or independent practice association. After the referral is made, the specialist shall be authorized to provide health care services that are within the specialist's area of expertise and training to the enrollee in the same manner as the enrollee's primary care physician, subject to the terms of the treatment plan.

(c) The determinations described in subdivisions (a) and (b) shall be made within three business days of the date the request for the determination is made by the enrollee or the enrollee's primary care physician and all appropriate medical records and other items of information necessary to make the determination are provided. Once a determination is made, the referral shall be made within four business days of the date the proposed treatment plan, if any, is submitted to the plan medical director or his or her designee.

(d) Subdivisions (a) and (b) do not require a health care service plan to refer to a specialist who, or to a specialty care center that, is not employed by or under contract with the health care service plan to provide health care services to its enrollees, unless there is no specialist within the plan network that is appropriate to provide treatment to the enrollee, as determined by the primary care physician in consultation with the plan medical director as documented in the treatment plan developed pursuant to subdivision (a) or (b).

(e) For the purposes of this section, "specialty care center" means a center that is accredited or designated by an agency of the state or federal government or by a voluntary national health organization as having special expertise in treating the life-threatening disease or condition or degenerative and disabling disease or condition for which it is accredited or designated.

(f) As used in this section, a "standing referral" means a referral by a primary care physician to a specialist for more than one visit to the specialist, as indicated in the treatment plan, if any, without the primary care physician having to provide a specific referral for each visit.

SEC. 2. Section 14450.5 is added to the Welfare and Institutions Code, to read:

14450.5. (a) No contract between the department and a prepaid health plan that is contracting with, or that is governed, owned, or operated by, a county board of supervisors, shall be approved or renewed unless the standards set forth in Section 1374.16 of the Health and Safety Code are met. The treatment plan developed pursuant to Section 1374.16 of the Health and Safety Code shall be consistent with federal and state medicaid requirements. Nothing in Section 1374.16 of the Health and Safety Code is intended to alter or abrogate any other requirements of federal or state law with regard to medicaid.

(b) The requirements of this section shall apply to all managed care plan contracts entered into under any of the following:

(1) The act that added this subdivision.

(2) Any of the following provisions of Chapter 7 (commencing with Section 14000).

(A) Article 2.7 (commencing with Section 14087.3).

(B) Article 2.9 (commencing with Section 14088).

(C) Article 2.91 (commencing with Section 14089).

(3) Article 7 of Chapter 8 (commencing with Section 14490).

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 that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 32

An act to amend Section 19617.7 of the Business and Professions Code, relating to horse racing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 5, 1998. Filed with Secretary of State May 5, 1998.]

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

SECTION 1. Section 19617.7 of the Business and Professions Code is amended to read:

19617.7. (a) The following definitions govern the construction of this section:

(1) "Breeder" means a person who is registered as the breeder of a California-bred quarter horse with the official registering agency and is named on the applicable Certificate of Registration issued by the American Quarter Horse Association.

(2) "Eligible earnings" means the following:

(A) In the case of breeder premiums, the annual amount earned by a California-bred quarter horse for finishing first or second in qualifying races.

(B) In the case of owners' awards, the annual amount earned by a California-bred quarter horse for finishing first or second in qualifying races.

(C) In the case of stallion awards, the annual amount earned by California-conceived or California-bred foals of an eligible quarter horse sire for finishing first or second in qualifying races.

(D) In order for earnings from a qualifying race to be considered as eligible earnings, a California-bred quarter horse shall be registered as such with the official registering agency before the entries were taken by the association for the qualifying race in which that horse earned purse money.

(E) For purposes of this paragraph, the maximum purse considered earned in any qualifying race within this state is two hundred thousand dollars ($200,000) for a win, and eighty thousand dollars ($80,000) for a second place finish.

(F) In determining the purse earned in any qualifying race that is a stakes race, the amount earned shall be based on the added money and other sources of the purse, such as nomination, entry, or starting fees, bonuses, and sponsor contributions, or any combination thereof.

(G) On or before February 1 of any year, the stallion owner shall verify with the official registering agency the eligibility of a stallion to receive the stallion award to which the owner is entitled.

(3) "Eligible quarter horse sire" means a quarter horse, or thoroughbred stallion, bred to a quarter horse mare, where the sire was continuously present in this state from February 1 to July 15, inclusive, of the calendar year in which the qualifying race was conducted, as well as from February 1 to July 15, inclusive, of the following calender year. If a sire dies in this state and stood his last season at stud in this state, he shall thereafter continue to be considered an eligible quarter horse sire. Notwithstanding any other provision of law, a quarter horse or thoroughbred stallion shall be considered an eligible quarter horse sire only if its owner has verified the stallion's eligibility with the official registering agency for stallion awards on or before February 1 of the calendar year immediately

following the calendar year for which the awards are being distributed.

(4) "Official registering agency" means the Pacific Coast Quarter Horse Racing Association.

(5) "Owner" means the person who is registered with the paymaster of purses on the date the qualifying race was conducted as the owner of the California-bred quarter horse earning purse money in that race.

(6) "Qualifying race" means all quarter horse races in this state.

(7) "Stallion owner" means the person who is the owner of the eligible quarter horse sire as of December 31 of the calendar year in which that sire's foals had eligible earnings or the person who owned the eligible quarter horse sire on the date that the sire died.

(b) Any association conducting a race meeting that includes quarter horse racing shall deposit with the official registering agency 0.2 of 1 percent of the total amount handled ontrack, and 0.4 of 1 percent of the total amount handled offtrack, in daily conventional and exotic parimutuel pools and a sum equal to 25 percent of those funds specified for purses in Sections 19612.1, 19612.2, 19614.2, 19616, and 19616.1 and the sums specified in Sections 19567 and 19617.5, resulting from quarter horse racing. The deposits shall be made at the following intervals:

(1) For any meeting of 20 racing days or less, the requisite deposit shall be made not later than seven days immediately following the last day of that meeting.

(2) For any meeting of more than 20 racing days, the initial deposit shall be made not later than 27 racing days after the commencement of that meeting and every 20 racing days thereafter, with a final deposit made not later than seven days following the last day of that meeting. The initial deposit for that meeting shall be based upon the applicable amount handled during the first 20 racing days of the meeting and deposits thereafter shall be based upon the applicable amount handled during the ensuing periods of 20 racing days with the last deposit being based upon the applicable amount handled from the end of the last 20-racing-day period for which a deposit has been made to the end of the meeting.

(c) After deducting a sum up to, but not to exceed, 10 percent of the total deposits made pursuant to subdivision (b) and the total deposits made pursuant to other provisions of this chapter, including Sections 19612.1, 19612.2, 19614.2, 19616, and 19616.1, to compensate the official registering agency for its administrative costs, the official registering agency shall distribute annually the balance of the deposits in the following manner:

(1) Sixty percent to the breeder fund from which breeder premiums are to be paid.

(2) Twenty-five percent to the owner fund from which owners' awards are to be paid.

(3) Fifteen percent to the stallion fund from which stallion awards are to be paid.

(d) The official registering agency shall make the following payments to the breeder, owner, and stallion owner to encourage agriculture and the breeding of high quality horses in this state:

(1) The breeder shall be paid a sum based on a prorated share, but not less than 10 percent, of first and second place earnings from qualified races by a California-bred quarter horse.

If the sum paid to the breeder is less than 10 percent of the purse paid for a first or second place finish in a qualifying race, the owners' award and stallion award pools shall respectively contribute 62.5 percent and 37.5 percent of the moneys necessary to the breeder premium pool to raise the breeder premium to 10 percent minimum. In calculating the 10 percent breeder premium, the maximum purse considered earned in any qualifying race within this state is two hundred thousand dollars ($200,000) for a first place finish, and eighty thousand dollars ($80,000) for a second place finish.

(2) The owner shall be paid an owners' award, a sum based on a prorated share of first and second place earnings from qualified races by a California-bred quarter horse.

(3) The stallion owner shall be paid a stallion award, a sum based on a prorated share of first and second place earnings from qualified races by a California-bred quarter horse.

Stallion awards shall not be made to the owner of a sire that has been out of the state for breeding purposes during the calendar year.

(4) The breeder premium, and owners' and stallion awards shall be paid not later than March 31 of the calendar year immediately following the calendar year for which the awards or premiums were earned. Any payments for awards or premiums that are uncashed on December 31 of the year issued, shall accrue to the following year for distribution on an equal basis. All uncashed payments for premiums and awards that have accumulated as of December 31, 1994, shall be paid to the 1995 awards program in accordance with subdivision (c).

(e) The amount remaining for distribution under this section, if any, after the payments are made under subdivision (d) shall be used for the payment of quarter horse breeder premiums and owners' and stallion awards on a prorated percentage based on the win and second place shares of the purse, exclusive of all purse money not derived from the parimutuel pools, to the breeders, owners, and owners of sires of quarter horses who have been officially placed first or second in one or more qualifying races.

(f) If there are insufficient funds to make all of the distributions in this section, there shall be no assessments made against any association to fund the deficiencies.

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 eliminate a hardship to the quarter horse breeding industry and to encourage and promote the growth of that industry for the 1998 quarter horse racing season, it is necessary that this act take effect immediately.

CHAPTER 33

An act to amend Section 33452 of the Food and Agricultural Code, relating to agriculture.

[Approved by Governor May 5, 1998. Filed with Secretary of State May 5, 1998.]

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

SECTION 1. Section 33452 of the Food and Agricultural Code is amended to read:

33452. (a) A dairy cow farm that was marketing market milk, including milk that meets the definition of restricted use market milk, on August 1, 1996, shall not market manufacturing milk. However, annually on January 1 such a dairy may elect to market manufacturing milk for a 12-month period. This provision applies to a dairy cow farm that was marketing manufacturing milk on August 1, 1996, that subsequently obtains a market milk grade A permit, but does not apply if the facility is sold or leased to a new operator.

(b) This section does not apply to dairy goat farms.

CHAPTER 34

An act to amend Sections 47601, 47602, 47605, 47607, 47608, 47610, 47612, 47613, and 47616.5 of, and to add Sections 47604, 47604.3, 47604.5, 47605.5, 47613.5, 47613.7, 47614, and 47615 to, the Education Code, relating to charter schools.

[Approved by Governor May 7, 1998. Filed with Secretary of State May 8, 1998.]

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

SECTION 1. Section 47601 of the Education Code is amended to read:

47601. It is the intent of the Legislature, in enacting this part, to provide opportunities for teachers, parents, pupils, and community members to establish and maintain schools that operate

independently from the existing school district structure, as a method to accomplish all of the following:

(a) Improve pupil learning.

(b) Increase learning opportunities for all pupils, with special emphasis on expanded learning experiences for pupils who are identified as academically low achieving.

(c) Encourage the use of different and innovative teaching methods.

(d) Create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the schoolsite.

(e) Provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system.

(f) Hold the schools established under this part accountable for meeting measurable pupil outcomes, and provide the schools with a method to change from rule-based to performance-based accountability systems.

(g) Provide vigorous competition within the public school system to stimulate continual improvements in all public schools.

SEC. 2. Section 47602 of the Education Code is amended to read:

47602. (a) (1) In the 1998–99 school year, the maximum total number of charter schools authorized to operate in this state shall be 250. In the 1999–2000 school year, and in each successive school year thereafter, an additional 100 charter schools are authorized to operate in this state each successive school year. The limits contained in this paragraph may not be waived pursuant to Section 33050 or any other provision of law.

(2) By July 1, 2003, the Legislative Analyst shall, pursuant to the criteria in Section 47616.5, report to the Legislature on the effectiveness of the charter school approach authorized under this part and recommend whether to expand or reduce the annual rate of growth of charter schools authorized pursuant to this section.

(b) No charter shall be granted under this part that authorizes the conversion of any private school to a charter school. No charter school shall receive any public funds for a pupil if the pupil also attends a private school that charges the pupil's family for tuition. The State Board of Education shall adopt regulations to implement this section.

SEC. 3. Section 47604 is added to the Education Code, to read:

47604. (a) Charter schools may elect to operate as, or be operated by, a nonprofit public benefit corporation, formed and organized pursuant to the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 1) of the Corporations Code).

(b) The governing board of a school district that grants a charter for the establishment of a charter school formed and organized pursuant to this section shall be entitled to a single representative on the board of directors of the nonprofit public benefit corporation.

(c) It is the intent of the Legislature that an authority that grants a charter to a charter school to be operated by, or as, a nonprofit public benefit corporation shall not be liable for the debts or obligations of the charter school.

SEC. 4. Section 47604.3 is added to the Education Code, to read:

47604.3. A charter school shall promptly respond to all reasonable inquiries, including, but not limited to, inquiries regarding its financial records, from its chartering authority or from the Superintendent of Public Instruction and shall consult with the chartering authority or the Superintendent of Public Instruction regarding any inquiries.

SEC. 5. Section 47604.5 is added to the Education Code, to read:

47604.5. The State Board of Education, whether or not it is the authority that granted the charter, may, based upon the recommendation of the Superintendent of Public Instruction, take appropriate action, including, but not limited to, revocation of the school's charter, when the State Board of Education finds any of the following:

(a) Gross financial mismanagement that jeopardizes the financial stability of the charter school.

(b) Illegal or substantially improper use of charter school funds for the personal benefit of any officer, director, or fiduciary of the charter school.

(c) Substantial and sustained departure from measurably successful practices such that continued departure would jeopardize the educational development of the school's pupils.

SEC. 6. Section 47605 of the Education Code is amended to read:

47605. (a) (1) Except as set forth in paragraph (2), a petition for the establishment of a charter school within any school district may be circulated by any one or more persons seeking to establish the charter school. The petition may be submitted to the governing board of the school district for review after either of the following conditions are met:

(A) The petition has been signed by a number of parents or guardians of pupils that is equivalent to at least one-half of the number of pupils that the charter school estimates will enroll in the school for its first year of operation.

(B) The petition has been signed by a number of teachers that is equivalent to at least one-half of the number of teachers that the charter school estimates will be employed at the school during its first year of operation.

(2) In the case of a petition for the establishment of a charter school through the conversion of an existing public school, that would not be eligible for a loan pursuant to subdivision (b) of Section 41365, the petition may be circulated by any one or more persons seeking to establish the converted charter school. The petition may be submitted to the governing board of the school district for review after the petition has been signed by not less than 50 percent of the

permanent status teachers currently employed at the public school to be converted.

(3) A petition shall include a prominent statement that a signature on the petition means that the parent or guardian is meaningfully interested in having his or her child, or ward, attend the charter school, or in the case of a teacher's signature, means that the teacher is meaningfully interested in teaching at the charter school. The proposed charter shall be attached to the petition.

(b) No later than 30 days after receiving a petition, in accordance with subdivision (a), the governing board of the school district shall hold a public hearing on the provisions of the charter, at which time the governing board of the school district shall consider the level of support for the petition by teachers employed by the district, other employees of the district, and parents. Following review of the petition and the public hearing, the governing board of the school district shall either grant or deny the charter within 60 days of receipt of the petition, provided, however, that the date may be extended by an additional 30 days if both parties agree to the extension. In reviewing petitions for the establishment of charter schools pursuant to this section, the chartering authority shall be guided by the intent of the Legislature that charter schools are and should become an integral part of the California educational system and that establishment of charter schools should be encouraged. A school district governing board shall grant a charter for the operation of a school under this part if it is satisfied that granting the charter is consistent with sound educational practice. The governing board of the school district shall not deny a petition for the establishment of a charter school unless it makes written factual findings, specific to the particular petition, setting forth specific facts to support one, or more, of the following findings:

(1) The charter school presents an unsound educational program for the pupils to be enrolled in the charter school.

(2) The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.

(3) The petition does not contain the number of signatures required by subdivision (a).

(4) The petition does not contain an affirmation of each of the conditions described in subdivision (d).

(5) The petition does not contain reasonably comprehensive descriptions of all of the following:

(A) A description of the educational program of the school, designed, among other things, to identify those whom the school is attempting to educate, what it means to be an "educated person" in the 21st century, and how learning best occurs. The goals identified in that program shall include the objective of enabling pupils to become self-motivated, competent, and lifelong learners.

(B) The measurable pupil outcomes identified for use by the charter school. "Pupil outcomes," for purposes of this part, means the

extent to which all pupils of the school demonstrate that they have attained the skills, knowledge, and attitudes specified as goals in the school's educational program.

(C) The method by which pupil progress in meeting those pupil outcomes is to be measured.

(D) The governance structure of the school, including, but not limited to, the process to be followed by the school to ensure parental involvement.

(E) The qualifications to be met by individuals to be employed by the school.

(F) The procedures that the school will follow to ensure the health and safety of pupils and staff. These procedures shall include the requirement that each employee of the school furnish the school with a criminal record summary as described in Section 44237.

(G) The means by which the school will achieve a racial and ethnic balance among its pupils that is reflective of the general population residing within the territorial jurisdiction of the school district to which the charter petition is submitted.

(H) Admission requirements, if applicable.

(I) The manner in which annual, independent, financial audits shall be conducted, which shall employ generally accepted accounting principles, and the manner in which audit exceptions and deficiencies shall be resolved to the satisfaction of the chartering authority.

(J) The procedures by which pupils can be suspended or expelled.

(K) The manner by which staff members of the charter schools will be covered by the State Teachers' Retirement System, the Public Employees' Retirement System, or federal social security.

(L) The public school attendance alternatives for pupils residing within the school district who choose not to attend charter schools.

(M) A description of the rights of any employee of the school district upon leaving the employment of the school district to work in a charter school, and of any rights of return to the school district after employment at a charter school.

(N) The procedures to be followed by the charter school and the entity granting the charter to resolve disputes relating to provisions of the charter.

(c) (1) Charter schools shall meet all statewide standards and conduct the pupil assessments required pursuant to Section 60605 and any other statewide standards authorized in statute or pupil assessments applicable to pupils in noncharter public schools.

(2) Charter schools shall on a regular basis consult with their parents and teachers regarding the school's educational programs.

(d) (1) In addition to any other requirement imposed under this part, a charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations, shall not charge tuition, and shall not discriminate against any pupil on the basis of ethnicity, national origin, gender, or disability. Except as

provided in paragraph (2), admission to a charter school shall not be determined according to the place of residence of the pupil, or of his or her parent or guardian, within this state, except that any existing public school converting partially or entirely to a charter school under this part shall adopt and maintain a policy giving admission preference to pupils who reside within the former attendance area of that public school.

(2) (A) A charter school shall admit all pupils who wish to attend the school.

(B) However, if the number of pupils who wish to attend the charter school exceeds the school's capacity, attendance, except for existing pupils of the charter school, shall be determined by a public random drawing. Preference shall be extended to pupils currently attending the charter school and pupils who reside in the district. Other preferences may be permitted by the chartering authority on an individual school basis and only if consistent with the law.

(C) In the event of a drawing, the chartering authority shall make reasonable efforts to accommodate the growth of the charter school and, in no event, shall take any action to impede the charter school from expanding enrollment to meet student demand.

(e) No governing board of a school district shall require any employee of the school district to be employed in a charter school.

(f) No governing board of a school district shall require any pupil enrolled in the school district to attend a charter school.

(g) The governing board of a school district shall require that the petitioner or petitioners provide information regarding the proposed operation and potential effects of the school, including, but not limited to, the facilities to be utilized by the school, the manner in which administrative services of the school are to be provided, and potential civil liability effects, if any, upon the school and upon the school district. The petitioner or petitioners shall also be required to provide financial statements that include a proposed first-year operational budget, including startup costs, and cash-flow and financial projections for the first three years of operation.

(h) In reviewing petitions for the establishment of charter schools within the school district, the school district governing board shall give preference to petitions that demonstrate the capability to provide comprehensive learning experiences to pupils identified by the petitioner or petitioners as academically low achieving pursuant to the standards established by the State Department of Education under Section 54032.

(i) Upon the approval of the petition by the governing board of the school district, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition, to the State Board of Education.

(j) (1) If the governing board of a school district denies a petition, the petitioner may elect to submit the petition for the establishment of a charter school to either the county board of education or directly

to the State Board of Education. The county board of education or the State Board of Education, as the case may be, shall review the petition pursuant to subdivision (b). If the petitioner elects to submit a petition for establishment of a charter school to the county board of education and the county board of education denies the petition, the petitioner may file a petition for establishment of a charter school with the State Board of Education.

(2) A charter school for which a charter is granted by either the county board of education or the State Board of Education pursuant to this subdivision shall qualify fully as a charter school for all funding and other purposes of this part.

(3) If either the county board of education or the State Board of Education fails to act on a petition within 120 days of receipt, the decision of the governing board of the school district to deny a petition shall, thereafter, be subject to judicial review.

(4) The State Board of Education shall adopt regulations implementing this subdivision.

(k) (1) The State Board of Education may, by mutual agreement, designate its supervisorial and oversight responsibilities for a charter school approved by the State Board of Education to any local education agency in the county in which the charter school is located or to the governing board of the school district that first denied the petition.

(2) The designated local education agency shall have all monitoring and supervising authority of a chartering agency, including, but not limited to, powers and duties set forth in Section 47607, except the power of revocation, which shall remain with the State Board of Education.

(3) A charter school that has been granted its charter by the State Board of Education and elects to seek renewal of its charter shall, prior to expiration of the charter, submit its petition for renewal to the governing board of the school district that initially denied the charter. If the governing board of the school district denies the school's petition for renewal, the school may petition the State Board of Education for renewal of its charter.

(*l*) Teachers in charter schools shall be required to hold a Commission on Teacher Credentialing certificate, permit, or other document equivalent to that which a teacher in other public schools would be required to hold. These documents shall be maintained on file at the charter school and shall be subject to periodic inspection by the chartering authority. It is the intent of the Legislature that charter schools be given flexibility with regard to noncore, noncollege preparatory courses.

SEC. 7. Section 47605.5 is added to the Education Code, to read:

47605.5. A petition may be submitted directly to a county board of education in the same manner as set forth in Section 47605 for charter schools that will serve pupils for whom the county office of education would otherwise be responsible for providing direct

education and related services. Any denial of a petition shall be subject to the same process for any other county board of education denial of a charter school petition pursuant to this part.

SEC. 8. Section 47607 of the Education Code is amended to read:

47607. (a) (1) A charter may be granted pursuant to Sections 47605, 47605.5, and 47606 for a period not to exceed five years. A charter granted by a school district governing board , a county board of education or the State Board of Education, may be granted one or more subsequent renewals by that entity. Each renewal shall be for a period of five years. A material revision of the provisions of a charter petition may be made only with the approval of the authority that granted the charter. The authority that granted the charter may inspect or observe any part of the charter school at any time.

(2) Renewals and material revisions of charters shall be governed by the standards and criteria in Section 47605.

(b) A charter may be revoked by the authority that granted the charter under this chapter if the authority finds that the charter school did any of the following:

(1) Committed a material violation of any of the conditions, standards, or procedures set forth in the charter .

(2) Failed to meet or pursue any of the pupil outcomes identified in the charter .

(3) Failed to meet generally accepted accounting principles, or engaged in fiscal mismanagement.

(4) Violated any provision of law.

(c) Prior to revocation, the authority that granted the charter shall notify the charter public school of any violation of this section and give the school a reasonable opportunity to cure the violation, unless the authority determines, in writing, that the violation constitutes a severe and imminent threat to the health or safety of the pupils.

SEC. 9. Section 47608 of the Education Code is amended to read:

47608. All meetings of the governing board of the school district and the county board of education at which the granting, revocation, appeal, or renewal of a charter petition is discussed shall comply with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Division 2 of Title 5 of the Government Code).

SEC. 10. Section 47610 of the Education Code is amended to read:

47610. A charter school shall comply with this part and all of the provisions set forth in its charter , but is otherwise exempt from the laws governing school districts except all of the following:

(a) As specified in Section 47611.

(b) As specified in Section 41365.

(c) All laws establishing minimum age for public school attendance.

SEC. 11. Section 47612 of the Education Code is amended to read:

47612. (a) The Superintendent of Public Instruction shall make all of the following apportionments to each charter school for each fiscal year:

(1) From funds appropriated to Section A of the State School Fund for apportionment for that fiscal year pursuant to Article 2 (commencing with Section 42238) of Chapter 7 of Part 24, an amount for each unit of regular average daily attendance in the charter school that is equal to the current fiscal year base revenue limit for the school district to which the charter petition was submitted. In no event shall average daily attendance in a charter school be generated by a pupil who is not a California resident. To remain eligible for generating charter school apportionments, a pupil over 19 years of age shall be continuously enrolled in public school and make satisfactory progress towards award of a high school diploma. The State Board of Education shall, on or before January 1, 2000, adopt regulations defining "satisfactory progress."

(2) For each pupil enrolled in the charter school who is entitled to special education services, the state and federal funds for special education services for that pupil that would have been apportioned for that pupil to the school district to which the charter petition was submitted.

(3) Funds for the programs described in clause (i) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 54761, and Sections 63000 and 64000, to the extent that any pupil enrolled in the charter school is eligible to participate.

(b) A charter school shall be deemed to be under the exclusive control of the officers of the public schools for purposes of Section 8 of Article IX of the California Constitution, with regard to the appropriation of public moneys to be apportioned to any charter school, including, but not limited to, appropriations made for the purposes of subdivisions (a) and (b).

(c) A charter school shall be deemed to be a "school district" for purposes of Section 41302.5 and Sections 8 and 8.5 of Article XVI of the California Constitution.

SEC. 12. Section 47613 of the Education Code is amended to read:

47613. Notwithstanding subdivision (c) of Section 48209.11, the full apportionment received by the basic aid district pursuant to this section shall be provided to the charter school, and with respect to any pupil of a charter school located within a basic aid school district who attended a public school in a district other than a basic aid district immediately before transferring to the charter school, the Superintendent of Public Instruction, commencing with the 1998–99 fiscal year, shall calculate for that school an apportionment of state funds that provides 70 percent of the district revenue limit calculated pursuant to Section 42238 that would have been apportioned to the school district of residence for any average daily attendance credited pursuant to Section 48209.11. For purposes of this section, "basic aid district" means a school district that does not receive from the state, for any fiscal year in which the subdivision is applied, an apportionment of state funds pursuant to subdivision (h) of Section 42238.

SEC. 13. Section 47613.5 is added to the Education Code, to read:

47613.5. (a) Notwithstanding Sections 47612 and 47613, commencing with the 1999–2000 school year and only upon adoption of regulations pursuant to subdivision (b), charter school operational funding shall be equal to the total funding that would be available to a similar school district serving a similar pupil population, provided that a charter school shall not be funded as a necessary small school or a necessary small high school, nor receive revenue limit funding that exceeds the statewide average for a school district of a similar type.

(b) The State Department of Education shall propose, and the State Board of Education may adopt, regulations to implement subdivision (a) and, to the extent possible and consistent with federal law, provide for simple and, at the option of the charter school, local or direct allocation of funding to charter schools.

(c) For the purposes of this section, the following terms have the following meanings:

(1) "Operational funding" means all funding other than capital funding.

(2) "School district of a similar type" means a school district that is serving similar grade levels; elementary, high, or unified.

SEC. 14. Section 47613.7 is added to the Education Code, to read:

47613.7. (a) Except as set forth in subdivision (b), a chartering agency may charge for the actual costs of supervisorial oversight of a charter school not to exceed 1 percent of the revenue of the charter school.

(b) A chartering agency may charge for the actual costs of supervisorial oversight of a charter school not to exceed 3 percent of the revenue of the charter school if the charter school is able to obtain substantially rent free facilities from the chartering agency.

(c) A local agency that is given the responsibility for supervisorial oversight of a charter school, pursuant to paragraph (1) of subdivision (k) of Section 47605, may charge for the costs of supervisorial oversight, and administrative costs necessary to secure charter school funding, not to exceed 3 percent of the revenue of the charter school. A charter school that is charged for costs under this subdivision shall not be charged pursuant to subdivision (a) or (b).

(d) This section shall not prevent the charter school from separately purchasing administrative or other services from the chartering agency or any other source.

(e) For the purposes of this section, a chartering agency means a school district, county department of education, or the State Board of Education, that granted the charter to the charter school.

SEC. 15. Section 47614 is added to the Education Code, to read:

47614. A school district in which a charter school operates shall permit a charter school to use, at no charge, facilities not currently being used by the school district for instructional or administrative purposes, or that have not been historically used for rental purposes

provided the charter school shall be responsible for reasonable maintenance of those facilities.

SEC. 16. Section 47615 is added to the Education Code, to read:

47615. (a) The Legislature finds and declares all of the following:

(1) Charter schools are part of the Public School System, as defined in Article IX of the California Constitution.

(2) Charter schools are under the jurisdiction of the Public School System and the exclusive control of the officers of the public schools, as provided in this part.

(3) Charter schools shall be entitled to full and fair funding, as provided in this part.

(b) This part shall be liberally construed to effectuate the findings and declarations set forth in this section.

SEC. 17. Section 47616.5 of the Education Code is amended to read:

47616.5. The Legislative Analyst shall contract for a neutral evaluator to conduct an evaluation of the effectiveness of the charter school approach authorized under this part and, on or before July 1, 2003, shall report to the Legislature and the Governor accordingly with recommendations to modify, expand, or terminate that approach. The evaluation of the effectiveness of the charter school approach shall include, but shall not be limited to, the following factors:

(a) If available, the pre- and post-charter school test scores of pupils attending charter schools and other pupil assessment tools.

(b) The level of parental satisfaction with the charter school approach compared with schools within the district in which the charter school is located.

(c) The impact of required parental involvement.

(d) The fiscal structures and practices of charter schools as well as the relationship of these structures and practices to school districts, including the amount of revenue received from various public and private sources.

(e) An assessment of whether or not the charter school approach has resulted in increased innovation and creativity.

(f) Opportunities for teachers under the charter school approach.

(g) Whether or not there is an increased focus on low-achieving and gifted pupils.

(h) Any discrimination and segregation in charter schools.

(i) If available, the number of charter school petitions submitted to governing boards of school districts and the number of those proposals that are denied, per year, since the enactment of the charter school law, including the reasons why the governing boards denied these petitions, and the reasons governing boards have revoked charters.

(j) The governance, fiscal liability and accountability practices and related issues between charter schools and the governing boards of the school districts approving their charters.

(k) The manner in which governing boards of school districts monitor the compliance of the conditions, standards, and procedures entered into under a charter.

(*l*) The extent of the employment of noncredentialed personnel in charter schools.

(m) An assessment of how the exemption from laws governing school districts allows charter schools to operate differently than schools operating under those laws.

(n) A comparison in each school district that has a charter school of the pupil dropout rate in the charter schools and in the noncharter schools.

(o) The role and impact of collective bargaining on charter schools.

SEC. 18. The provisions of Sections 1 to 17 of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 19. 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, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 35

An act to amend Section 6586 of, and to add Section 6586.5 to, the Government Code, relating to local agency borrowing.

[Approved by Governor May 12, 1998. Filed with Secretary of State May 13, 1998.]

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

SECTION 1. Section 6586 of the Government Code is amended to read:

6586. It is the Legislature's intent that this article be used to assist local agencies in financing public capital improvements, working capital, liability and other insurance needs, or projects whenever there are significant public benefits for taking that action. For the

purposes of this article, "significant public benefits" means any of the following benefits to the citizens of the local agency:

(a) Demonstrable savings in effective interest rate, bond preparation, bond underwriting, or bond issuance costs.

(b) Significant reductions in effective user charges levied by a local agency.

(c) Employment benefits from undertaking the project in a timely fashion.

(d) More efficient delivery of local agency services to residential and commercial development.

SEC. 2. Section 6586.5 is added to the Government Code, to read:

6586.5. (a) An authority may not issue bonds to construct, acquire, or finance a public capital improvement pursuant to this article unless both of the following conditions are satisfied with respect to each capital improvement to be constructed, acquired, or financed:

(1) It reasonably expects on the date of issuance of the bonds that the public capital improvement is to be located within the geographic boundaries of one or more members of the authority that is not itself an authority.

(2) A member of the authority within whose boundaries the public capital improvement is to be located has approved the financing of the public capital improvement and made a finding of significant public benefit in accordance with the criteria specified in Section 6586 after a public hearing held by that party within each county or city and county where the public capital improvement is to be located after notice of the hearing is published once at least five days prior to the hearing in a newspaper of general circulation in each affected county or city and county.

(b) This section shall not apply to bonds issued for any of the following purposes:

(1) To finance the undergrounding of utility and communication lines.

(2) To finance, consistent with the provisions of this chapter, facilities for the generation or transmission of electrical energy for public or private uses and all rights, properties, and improvements necessary therefor, including fuel and water facilities and resources.

(3) To finance facilities for the production, storage, transmission, or treatment of water, recycled water, or wastewater.

(4) To finance public school facilities.

(5) To finance public highways located within the jurisdiction of an authority that is authorized to exercise the powers specified in Chapter 5 (commencing with Section 31100) of Division 17 of the Streets and Highways Code, provided that the authority conducts the noticed public hearing and makes the finding of significant public benefit in accordance with this section.

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CHAPTER 36

An act to amend Sections 1562.3 and 1569.616 of the Health and Safety Code, relating to community care facilities.

[Approved by Governor May 12, 1998. Filed with Secretary of State May 13, 1998.]

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

SECTION 1. Section 1562.3 of the Health and Safety Code is amended to read:

1562.3. (a) The State Director of Social Services, in consultation with the State Director of Mental Health and the State Director of Developmental Services, shall establish a training program to ensure that licensees, operators, and staffs of adult residential facilities have appropriate training to provide the care and services for which a license or certificate is issued. The training program shall be developed in consultation with provider organizations.

(b) (1) An administrator of an adult residential care facility shall successfully complete a department approved certification program pursuant to subdivision (c) prior to employment.

(2) In those cases where the individual is both the licensee and the administrator of a facility, the individual shall comply with both the licensee and administrator requirements of this section.

(3) Failure to comply with this section shall constitute cause for revocation of the license of the facility.

(4) The licensee shall notify the department within 30 days of any change in administrators.

(c) (1) The administrator certification program shall require a minimum of 35 hours of classroom instruction that provides training on a uniform core of knowledge in each of the following areas:

(A) Laws, regulations, and policies and procedural standards that impact the operations of the type of facility for which the applicant will be an administrator.

(B) Business operations.

(C) Management and supervision of staff.

(D) Psychosocial needs of the facility residents.

(E) Community and support services.

(F) Physical needs for facility residents.

(G) Use, misuse, and interaction of medication commonly used by facility residents.

(H) Resident admission, retention, and assessment procedures.

(I) Nonviolent crisis intervention for administrators.

(2) The requirement for 35 hours of classroom instruction pursuant to this subdivision shall not apply to persons who were employed as administrators prior to July 1, 1996. A person holding the position of administrator of an adult residential facility on June 30,

1996, shall file a completed application for certification with the department on or before April 1, 1998. In order to be exempt from the 35-hour training program and the test component, the application shall include documentation showing proof of continuous employment as the administrator of an adult residential facility between, at a minimum, June 30, 1994, and June 30, 1996. An administrator of an adult residential facility who became certified as a result of passing the department-administered challenge test, that was offered between October 1, 1996, and December 23, 1996, shall be deemed to have fulfilled the requirements of this paragraph.

(3) Unless an extension is granted to the applicant by the department, an applicant for an administrator's certificate shall, within 60 days of the applicant's completion of classroom instruction, pass the written test provided in this section.

(d) The department shall not begin the process of issuing a certificate until receipt of all of the following:

(1) A certificate of completion of the administrator training required pursuant to this chapter.

(2) The fee required for issuance of the certificate. A fee of one hundred dollars ($100) shall be charged by the department to cover the costs of processing the application for certification.

(3) Documentation from the applicant that he or she has passed the written test.

(4) Submission of fingerprints. The department and the Department of Justice shall expedite the criminal record clearance for holders of certificates of completion. The department may waive the submission for those persons who have a current clearance on file.

(e) It shall be unlawful for any person not certified under this section to hold himself or herself out as a certified administrator of an adult residential facility. Any person willfully making any false representation as being a certified administrator is guilty of a misdemeanor.

(f) (1) Certificates issued under this section shall be renewed every two years and renewal shall be conditional upon the certificate holder submitting documentation of completion of 40 hours of continuing education related to the core of knowledge specified in subdivision (c). For purposes of this section, an individual who is an adult residential facility administrator and who is required to complete the continuing education hours required by the regulations of the State Department of Developmental Services, and approved by the regional center, shall be permitted to have up to 24 of the required continuing education course hours credited toward the 40-hour continuing education requirement of this section. Community college course hours approved by the regional centers shall be accepted by the department for certification.

(2) Every licensee and administrator of an adult residential facility is required to complete the continuing education requirements of this subdivision.

(3) Certificates issued under this section shall expire every two years, on the anniversary date of the initial issuance of the certificate, except that any administrator receiving his or her initial certification on or after January 1, 1999, shall make an irrevocable election to have his or her recertification date for any subsequent recertification either on the date two years from the date of issuance of the certificate or on the individual's birthday during the second calendar year following certification. The department shall send a renewal notice to the certificate holder 90 days prior to the expiration date of the certificate. If the certificate is not renewed prior to its expiration date, reinstatement shall only be permitted after the certificate holder has paid a delinquency fee equal to three times the renewal fee and has provided evidence of completion of the continuing education required.

(4) To renew a certificate, the certificate holder shall, on or before the certificate expiration date, request renewal by submitting to the department documentation of completion of the required continuing education courses and pay the renewal fee of one hundred dollars ($100), irrespective of receipt of the department's notification of the renewal. A renewal request postmarked on or before the expiration of the certificate is proof of compliance with this paragraph.

(5) A suspended or revoked certificate is subject to expiration as provided for in this section. If reinstatement of the certificate is approved by the department, the certificate holder, as a condition precedent to reinstatement, shall submit proof of compliance with paragraphs (1) and (2) of subdivision (f) and shall pay a fee in an amount equal to the renewal fee, plus the delinquency fee, if any, accrued at the time of its revocation or suspension. Delinquency fees, if any, accrued subsequent to the time of its revocation or suspension and prior to an order for reinstatement, shall be waived for one year to allow the individual sufficient time to complete the required continuing education units and to submit the required documentation. Individuals whose certificates will expire within 90 days after the order for reinstatement may be granted a three-month extension to renew their certificates during which time the delinquency fees shall not accrue.

(6) A certificate that is not renewed within four years after its expiration shall not be renewed, restored, reissued, or reinstated except upon completion of a certification training program, passing any test that may be required of an applicant for a new certificate at that time, and paying the appropriate fees provided for in this section.

(7) A fee of twenty-five dollars ($25) shall be charged for the reissuance of a lost certificate.

(8) A certificate holder shall inform the department of his or her employment status within 30 days of any change.

(g) The certificate shall be considered forfeited under the following conditions:

(1) The administrator has had a license revoked, suspended, or denied as authorized under Section 1550.

(2) The administrator has been denied employment, residence, or presence in a facility based on action resulting from an administrative hearing pursuant to Section 1522 or Section 1558.

(h) (1) The department, in consultation with the Department of Mental Health and the Department of Developmental Services, shall establish, by regulation, the program content, the testing instrument, the process for approving certification training programs, and criteria to be used in authorizing individuals, organizations, or educational institutions to conduct certification training programs and continuing education courses. These regulations shall be developed in consultation with provider organizations, and shall be made available at least six months prior to the deadline required for certification. The department may deny vendor approval to any agency or person in any of the following circumstances:

(A) The applicant has not provided the department with evidence satisfactory to the department of the ability of the applicant to satisfy the requirements of vendorization set out in the regulations adopted by the department pursuant to subdivision (i).

(B) The applicant person or agency has a conflict of interest in that the person or agency places its clients in adult residential facilities.

(C) The applicant public or private agency has a conflict of interest in that the agency is mandated to place clients in adult residential facilities and to pay directly for the services. The department may deny vendorization to this type of agency only as long as there are other vendor programs available to conduct the certification training programs and conduct education courses.

(2) The department may authorize vendors to conduct the administrator's certification training program pursuant to provisions set forth in this section. The department shall conduct the written test pursuant to regulations adopted by the department.

(3) The department shall prepare and maintain an updated list of approved training vendors.

(4) The department may inspect certification training programs and continuing education courses to determine if content and teaching methods comply with regulations. If the department determines that any vendor is not complying with the intent of this section, the department shall take appropriate action to bring the program into compliance, which may include removing the vendor from the approved list.

(5) The department shall establish reasonable procedures and timeframes not to exceed 30 days for the approval of vendor training programs.

(6) The department may charge a reasonable fee, not to exceed one hundred fifty dollars ($150) every two years to certification program vendors for review and approval of the initial 35-hour training program pursuant to subdivision (c). The department may also charge the vendor a fee not to exceed one hundred dollars ($100) every two years for the review and approval of the continuing education courses needed for recertification pursuant to this subdivision.

(i) This section shall be operative upon regulations being adopted by the department, no later than July 1, 1996, to implement the administrator certification program as provided for in this section. If regulations are not adopted by the department, or are adopted after July 1, 1996, this section shall not become operative.

(j) The department shall establish a registry for holders of certificates that shall include, at a minimum, information on employment status and criminal record clearance.

SEC. 2. Section 1569.616 of the Health and Safety Code is amended to read:

1569.616. (a) (1) An administrator of a residential care facility for the elderly shall be required to successfully complete a department approved certification program prior to employment.

(2) In those cases where the individual is both the licensee and the administrator of a facility, or a licensed nursing home administrator, the individual shall comply with the requirements of this section unless he or she qualifies for one of the exemptions provided for in subdivision (b).

(3) Failure to comply with this section shall constitute cause for revocation of the license of the facility where an individual is functioning as the administrator. The licensee shall notify the department within 30 days of any change in administrators.

(b) Individuals seeking exemptions under paragraph (2) of subdivision (a) shall meet the following criteria and fulfill the required portions of the certification program, as the case may be:

(1) An individual designated as the administrator of a residential care facility for the elderly who holds a valid license as a nursing home administrator issued in accordance with Chapter 8.5 (commencing with Section 3901) of Division 2 of the Business and Professions Code shall be required to complete the areas in the uniform core of knowledge required by this section that pertain to the law, regulations, policies, and procedural standards that impact the operations of residential care facilities for the elderly, the use, misuse, and interaction of medication commonly used by the elderly in a residential setting, and resident admission, retention, and assessment procedures, equal to 12 hours of classroom instruction. An individual meeting the requirements of this paragraph shall not be required to take a written test.

(2) In those cases where the individual was both the licensee and administrator on or before July 1, 1991, the individual shall be

required to complete all the areas specified for the certification program but shall not be required to take the written test required by this section. Those individuals exempted from the written test shall be issued a conditional certification that is valid only for the administrator of the facility for which the exemption was granted.

(A) As a condition to becoming an administrator of another facility the individual shall be required to pass the written test provided for in this section.

(B) As a condition to applying for a new facility license, the individual shall be required to pass the written test provided for in Section 1569.23.

(c) (1) The administrator certification program shall require a minimum of 40 hours of classroom instruction that provides training on a uniform core of knowledge in each of the following areas:

(A) Laws, regulations, and policies and procedural standards that impact the operations of residential care facilities for the elderly.

(B) Business operations.

(C) Management and supervision of staff.

(D) Psychosocial needs of the elderly.

(E) Community and support services.

(F) Physical needs for elderly persons.

(G) Use, misuse, and interaction of medication commonly used by the elderly.

(H) Resident admission, retention, and assessment procedures.

(2) Individuals applying for certification under this section shall successfully complete an approved certification program, pass a written test administered by the department within 60 days of completing the program, and submit the documentation required by subdivision (d) to the department within 30 days of being notified of having passed the test. The department may extend these time deadlines for good cause. The department shall notify the applicant of his or her test results within 30 days of administering the test.

(d) The department shall not begin the process of issuing a certificate until receipt of all of the following:

(1) A certificate of completion of the administrator training required pursuant to this chapter.

(2) The fee required for issuance of the certificate. A fee of one hundred dollars ($100) shall be charged by the department to cover the costs of processing the application for certification.

(3) Documentation of passing the written test or of qualifying for an exemption pursuant to subdivision (b).

(4) Submission of fingerprints. The department and the Department of Justice shall expedite the criminal record clearance for holders of certificates of completion. The department may waive the submission for those persons who have a current clearance on file.

(e) It shall be unlawful for any person not certified under this section to hold himself or herself out as a certified administrator of a residential care facility for the elderly. Any person willfully making

any false representation as being a certified administrator is guilty of a misdemeanor.

(f) (1) Certificates issued under this section shall be renewed every two years and renewal shall be conditional upon the certificate holder submitting documentation of completion of 40 hours of continuing education related to the core of knowledge specified in paragraph (1) of subdivision (c). For purposes of this section, individuals who hold a valid license as a nursing home administrator issued in accordance with Chapter 8.5 (commencing with Section 3901) of Division 2 of the Business and Professions Code and meet the requirements of paragraph (1) of subdivision (b) shall only be required to complete 20 hours of continuing education.

(2) Every certified administrator of a residential care facility for the elderly is required to renew his or her certificate and shall complete the continuing education requirements of this subdivision whether he or she is certified according to subdivision (a) or (b).

(3) Certificates issued under this section shall expire every two years, on the anniversary date of the initial issuance of the certificate, except that any administrator receiving his or her initial certification on or after January 1, 1999, shall make an irrevocable election to have his or her recertification date for any subsequent recertification either on the date two years from the date of issuance of the certificate or on the individual's birthday during the second calendar year following certification. The department shall send a renewal notice to the certificate holder 90 days prior to the expiration date of the certificate. If the certificate is not renewed prior to its expiration date, reinstatement shall only be permitted after the certificate holder has paid a delinquency fee equal to three times the renewal fee and has provided evidence of completion of the continuing education required.

(4) To renew a certificate, the certificate holder shall, on or before the certificate expiration date, request renewal by submitting to the department documentation of completion of the required continuing education courses and pay the renewal fee of one hundred dollars ($100), irrespective of receipt of the department's notification of the renewal. A renewal request postmarked on or before the expiration of the certificate is proof of compliance with this paragraph.

(5) A suspended or revoked certificate is subject to expiration as provided for in this section. If reinstatement of the certificate is approved by the department, the certificate holder, as a condition precedent to reinstatement, shall pay a fee in an amount equal to the renewal fee, plus the delinquency fee, if any, accrued at the time of its revocation or suspension.

(6) A certificate that is not renewed within four years after its expiration shall not be renewed, restored, reissued, or reinstated except upon completion of a certification program, passing any test

that may be required of an applicant for a new certificate at that time, and paying the appropriate fees provided for in this section.

(7) A fee of twenty-five dollars ($25) shall be charged for the reissuance of a lost certificate.

(8) A certificate holder shall inform the department of his or her employment status within 30 days of any change.

(g) The department may revoke a certificate issued under this section for any of the following:

(1) Procuring a certificate by fraud or misrepresentation.

(2) Knowingly making or giving any false statement or information in conjunction with the application for issuance of a certificate.

(3) Criminal conviction unless an exemption is granted pursuant to Section 1569.17.

(h) The certificate shall be considered forfeited under the following conditions:

(1) The administrator has had a license revoked, suspended, or denied as authorized under Section 1569.50.

(2) The administrator has been denied employment, residence, or presence in a facility based on action resulting from an administrative hearing pursuant to Section 1569.58.

(i) (1) The department shall establish, by regulation, the program content, the testing instrument, the process for approving certification programs, and criteria to be used in authorizing individuals, organizations, or educational institutions to conduct certification programs and continuing education courses. These regulations shall be developed in consultation with provider organizations, and shall be made available at least six months prior to the deadline required for certification. The department may deny vendor approval to any agency or person that has not provided satisfactory evidence of their ability to meet the requirements of vendorization set out in the regulations adopted pursuant to subdivision (j).

(2) The department may authorize vendors to conduct the administrator certification training program pursuant to provisions set forth in this section. The department shall conduct the written test pursuant to regulations adopted by the department.

(3) The department shall prepare and maintain an updated list of approved training vendors.

(4) The department may inspect training programs and continuing education courses to determine if content and teaching methods comply with regulations. If the department determines that any vendor is not complying with the intent of this section, the department shall take appropriate action to bring the program into compliance, which may include removing the vendor from the approved list.

(5) The department shall establish reasonable procedures and timeframes not to exceed 30 days for the approval of vendor training programs.

(6) The department may charge a reasonable fee, not to exceed one hundred fifty dollars ($150) every two years to certification program vendors for review and approval of the initial 40-hour training program pursuant to subdivision (c). The department may also charge the vendor a fee not to exceed one hundred dollars ($100) every two years for the review and approval of the continuing education courses needed for recertification pursuant to this subdivision.

(j) This section shall be operative upon regulations being adopted by the department to implement the administrator certification program as provided for in this section.

(k) The department shall establish a registry for holders of certificates that shall include, at a minimum, information on employment status and criminal record clearance.

CHAPTER 37

An act to amend Section 201.5 of the Labor Code, relating to employment, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 18, 1998. Filed with Secretary of State May 19, 1998.]

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

SECTION 1. Section 201.5 of the Labor Code is amended to read:

201.5. An employer who lays off an employee engaged in the production of motion pictures, whose unusual or uncertain terms of employment require special computation in order to ascertain the amount due, shall be deemed to have made immediate payment of wages within the meaning of Section 201 if the wages of the employee are paid by the next regular payday, as prescribed by Section 204, following the layoff. For purposes of this section, "layoff" means the termination of employment of an employee where the employee retains eligibility for reemployment with the employer. For purposes of this section, "discharge" means the unconditional termination of employment of an employee. However, if an employee is discharged, payment of wages shall be made within 24 hours after discharge excluding Saturdays, Sundays, and holidays. For purposes of this section, a payment required by this section may be mailed and the date of mailing is the date of payment.

The Legislature finds and determines that special provision must be made for the payment of wages on layoff and discharge of persons

engaged in the production of motion pictures because their employment at various locations is often far removed from the employer's principal administrative offices and the unusual hours of their employment in this industry is often geared to the completion of a portion of a picture which time of completion may have no relation to normal working hours.

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

In order to protect the financial security of employees in the motion picture industry at the earliest possible time, it is necessary that this act take immediate effect.

CHAPTER 38

An act to amend Section 2881 of the Public Utilities Code, relating to telecommunications.

[Approved by Governor May 22, 1998. Filed with Secretary of State May 22, 1998.]

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

SECTION 1. Section 2881 of the Public Utilities Code is amended to read:

2881. (a) The commission shall design and implement a program whereby each telephone corporation shall provide a telecommunications device capable of serving the needs of individuals who are deaf or hearing impaired, together with a single party line, at no charge additional to the basic exchange rate, to any subscriber who is certified as an individual who is deaf or hearing impaired by a licensed physician and surgeon, audiologist, or a qualified state or federal agency, as determined by the commission, and to any subscriber that is an organization representing individuals who are deaf or hearing impaired, as determined and specified by the commission pursuant to subdivision (e). A licensed hearing aid dispenser may certify the need of an individual to participate in the program if that individual has been previously fitted with an amplified device by the dispenser and the dispenser has the individual's hearing records on file prior to certification.

(b) The commission shall also design and implement a program whereby each telephone corporation shall provide a dual-party relay system, using third-party intervention to connect individuals who are deaf or hearing impaired and offices of organizations representing individuals who are deaf or hearing impaired, as determined and specified by the commission pursuant to subdivision (e), with

persons of normal hearing by way of intercommunications devices for individuals who are deaf or hearing impaired and the telephone system, making available reasonable access of all phases of public telephone service to telephone subscribers who are deaf or hearing impaired. In order to make a dual-party relay system that will meet the requirements of individuals who are deaf or hearing impaired available at a reasonable cost, the commission shall initiate an investigation, conduct public hearings to determine the most cost-effective method of providing dual-party relay service to the deaf or hearing impaired when using a telecommunications device, and solicit the advice, counsel, and physical assistance of statewide nonprofit consumer organizations of the deaf, during the development and implementation of the system. The commission shall phase in this program, on a geographical basis, over a three-year period ending on January 1, 1987. The commission shall apply for certification of this program under rules adopted by the Federal Communications Commission pursuant to Section 401 of the Americans with Disabilities Act of 1990 (Public Law 101-336).

(c) The commission shall also design and implement a program whereby specialized or supplemental telephone communications equipment may be provided to subscribers who are certified to be disabled at no charge additional to the basic exchange rate. The certification, including a statement of medical need for specialized telecommunications equipment, shall be provided by a licensed physician and surgeon acting within the scope of practice of his or her license, or by a qualified state or federal agency as determined by the commission. The commission shall, in this connection, study the feasibility of, and implement, if determined to be feasible, personal income criteria, in addition to the certification of disability, for determining a subscriber's eligibility under this subdivision.

(d) The commission shall establish a rate recovery mechanism through a surcharge not to exceed one-half of 1 percent uniformly applied to a subscriber's intrastate telephone service, other than one-way radio paging service and universal telephone service, both within a service area and between service areas, to allow telephone corporations to recover costs as they are incurred under this section. The surcharge shall be in effect until January 1, 2001. The commission shall require that the programs implemented under this section be identified on subscribers' bills, and shall establish a fund and require separate accounting for each of the programs implemented under this section.

(e) The commission shall determine and specify those statewide organizations representing the deaf or hearing impaired which shall receive a telecommunications device pursuant to subdivision (a) or a dual-party relay system pursuant to subdivision (b), or both, and in which offices the equipment shall be installed in the case of an organization having more than one office. The commission shall

direct the telephone corporations subject to its jurisdiction to comply with its determinations and specifications in this regard.

(f) The commission shall annually review the surcharge level and the balances in the funds established pursuant to subdivision (d). Until January 1, 2001, the commission shall be authorized to make, within the limits set by subdivision (d), any necessary adjustments to the surcharge to ensure that the programs supported thereby are adequately funded and that the fund balances are not excessive. A fund balance which is projected to exceed six months' worth of projected expenses at the end of the fiscal year is excessive.

(g) The commission shall prepare and submit to the Legislature, on or before December 31, 1988, and annually thereafter, a report on the fiscal status of the programs established and funded pursuant to this section and Sections 2881.1 and 2881.2. The report shall include a statement of the surcharge level established pursuant to subdivision (d) and revenues produced by the surcharge, an accounting of program expenses, and an evaluation of options for controlling those expenses and increasing program efficiency, including, but not limited to, all of the following proposals:

(1) The establishment of a means test for persons to qualify for program equipment or free or reduced charges for the use of telecommunication services.

(2) If and to the extent not prohibited under Section 401 of the Americans with Disabilities Act of 1990 (Public Law 101-336), the imposition of limits or other restrictions on maximum usage levels for the relay service, which shall include the development of a program to provide basic communications requirements to all relay users at discounted rates, including discounted toll call rates, and, for usage in excess of those basic requirements, at rates which recover the full costs of service.

(3) More efficient means for obtaining and distributing equipment to qualified subscribers.

(4) The establishment of quality standards for increasing the efficiency of the relay system.

(h) In order to continue to meet the access needs of individuals with functional limitations of hearing, vision, movement, manipulation, speech, and interpretation of information, the commission shall perform ongoing assessment of, and if appropriate, expand the scope of the program to allow for additional access capability consistent with evolving telecommunications technology.

SEC. 2. It is the intent of the Legislature that the provisions of this act shall not increase the surcharges to fund the program implemented pursuant to subdivision (a) of Section 2881 of the Public Utilities Code.

CHAPTER 39

An act to amend Section 12463.3 of, and to add Section 53895.5 to, the Government Code, and to amend Section 33080.6 of, and to add Section 33672.7 to, the Health and Safety Code, relating to redevelopment.

[Approved by Governor May 22, 1998. Filed with Secretary of State May 22, 1998.]

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

SECTION 1. Section 12463.3 of the Government Code is amended to read:

12463.3. On or before May 1 of each year, the Controller shall compile and publish annually reports of the financial transactions of each community redevelopment agency created pursuant to Division 24 (commencing with Section 33000) of the Health and Safety Code. The Controller shall make the data available to the Legislature and its agents upon request, on or before April 1 of each year. The Controller shall publish this information for each project area of each redevelopment agency. The reports shall be made in the time, form, and manner prescribed by the Controller, after consultation with the Department of Housing and Community Development and the advisory committee created pursuant to Section 12463.1.

SEC. 2. Section 53895.5 is added to the Government Code, to read:

53895.5. (a) An officer of a community redevelopment agency who fails or refuses to make and file his or her report within 20 days after receipt of a written notice of the failure from the Controller shall forfeit to the state:

(1) One thousand dollars ($1,000) in the case of a community redevelopment agency with total revenue, in the prior year, of less than one hundred thousand dollars ($100,000), as reported in the Controller's annual financial reports.

(2) Two thousand five hundred dollars ($2,500) in the case of a community redevelopment agency with total revenue, in the prior year, of at least one hundred thousand dollars ($100,000), but less than two hundred fifty thousand dollars ($250,000), as reported in the Controller's annual financial reports.

(3) Five thousand dollars ($5,000) in the case of a community redevelopment agency with total revenue, in the prior year, of at least two hundred fifty thousand dollars ($250,000), as reported in the Controller's annual financial reports.

(b) An officer of a community redevelopment agency who fails or refuses to make and file his or her report within 20 days after receipt

of a written notice of the failure from the Controller in the second or more consecutive year shall forfeit to the state:

(1) Two thousand dollars ($2,000) in the case of a community redevelopment agency with total revenue, in the prior year, of less than one hundred thousand dollars ($100,000), as reported in the Controller's annual financial reports.

(2) Five thousand dollars ($5,000) in the case of a community redevelopment agency with total revenue, in the prior year, of at least one hundred thousand dollars ($100,000) but less than two hundred fifty thousand dollars ($250,000), as reported in the Controller's annual financial reports.

(3) Ten thousand dollars ($10,000) in the case of a community redevelopment agency with total revenue, in the prior year, of at least two hundred fifty thousand dollars ($250,000), as reported in the Controller's annual financial reports.

(c) In the case of a community redevelopment agency that fails or refuses to make and file its report within 20 days after receipt of a written notice of the failure from the Controller in the third or more consecutive year, the Controller shall conduct or cause to be conducted an independent financial audit report consistent with the requirements of Section 33080.1 of the Health and Safety Code. The community redevelopment agency shall reimburse the Controller for the cost of complying with this subdivision. The community redevelopment agency shall not use any of the money in the Low and Moderate Income Housing Fund to reimburse the Controller.

(d) Upon the request of the Controller, the Attorney General shall prosecute an action for the forfeiture in the name of the people of the State of California.

(e) A community redevelopment agency that makes a forfeiture or payment pursuant to this section shall still file the report required pursuant to Section 53891.

SEC. 3. Section 33080.6 of the Health and Safety Code is amended to read:

33080.6. On or before May 1 of each year, the department shall compile and publish reports of the activities of redevelopment agencies for the previous fiscal year, based on the information reported pursuant to subdivision (c) of Section 33080.1 and reporting the types of findings made by agencies pursuant to paragraph (1), (2), or (3) of subdivision (a) of Section 33334.2, including the date of the findings. The department's compilation shall also report on the project area mergers reported pursuant to Section 33488. The department shall publish this information for each project area of each redevelopment agency. These reports may also contain the biennial review of relocation assistance required by Section 50460. The first report published pursuant to this section shall be for the 1984–85 fiscal year. For fiscal year 1987–88 and succeeding fiscal years, the report shall contain a list of those project areas which are not subject to the requirements of Section 33413.

The department shall send a copy of the executive summary of its report to each redevelopment agency for which information was reported pursuant to Section 33080.1 for the fiscal year covered by the report. The department shall send a copy of its report to each redevelopment agency that requests a copy.

SEC. 4. Section 33672.7 is added to the Health and Safety Code, to read:

33672.7. On or before August 15 of each year, the county auditor or other officer responsible for allocation of tax revenues pursuant to Section 33670 shall prepare a statement for each project area that provides the amount of disbursement made in the prior fiscal year pursuant to Section 33670 and the amounts of disbursement made pursuant to Sections 33401, 33607.5, 33607.7, and 33676.

SEC. 5. This act is intended to implement the recommendations of the Task Force on Redevelopment Agencies' Affordable Housing Reports, convened by the Chair of the Senate Committee on Housing and Land Use. The recommendations were contained in the report, "Timely, Accurate, and Reliable" issued by the task force on July 7, 1997.

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

CHAPTER 40

An act to amend Sections 33080, 33080.1, and 33080.3 of the Health and Safety Code, relating to redevelopment.

[Approved by Governor May 22, 1998. Filed with Secretary of State May 22, 1998.]

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

SECTION 1. Section 33080 of the Health and Safety Code is amended to read:

33080. (a) Every redevelopment agency shall file with the Controller within six months of the end of the agency's fiscal year a copy of the report required by Section 33080.1. In addition, each

redevelopment agency shall file with the department a copy of the audit report required by subdivision (a) of Section 33080.1. The reports shall be made in the time, format, and manner prescribed by the Controller after consultation with the department.

(b) The redevelopment agency shall provide a copy of the report required by Section 33080.1, upon the written request of any person or any taxing agency. If the report does not include detailed information regarding administrative costs, professional services, or other expenditures, the person or taxing agency may request, and the redevelopment agency shall provide, that information. The person or taxing agency shall reimburse the redevelopment agency for all actual and reasonable costs incurred in connection with the provision of the requested information.

SEC. 2. 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 by a certified public accountant or public accountant, licensed by the State of California, in accordance with Government Auditing Standards adopted by the Comptroller General of the United States. The audit report shall meet, at a minimum, the audit guidelines prescribed by the Controller's office pursuant to Section 33080.3 and also include a report on 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 in the previous fiscal year affecting housing and displacement that contains the information required by Sections 33080.4 and 33080.7.

(d) A description of the agency's progress, including specific actions and expenditures, in alleviating blight in the previous fiscal year.

(e) A list of, and status report on, all loans made by the redevelopment agency that are fifty thousand dollars ($50,000) or more, that in the previous fiscal year were in default, or not in compliance with the terms of the loan approved by the redevelopment agency.

(f) A description of the total number and nature of the properties that the agency owns and those properties the agency has acquired in the previous fiscal year.

(g) Any other information that the agency believes useful to explain its programs, including, but not limited to, the number of jobs created and lost in the previous fiscal year as a result of its activities.

SEC. 3. Section 33080.3 of the Health and Safety Code is amended to read:

33080.3. The Controller shall develop and periodically revise the guidelines for the content of the report required by Section 33080.1. The Controller shall appoint an advisory committee to advise in the development of the guidelines. The advisory committee shall include representatives from among those persons nominated by the department, the Legislative Analyst, the California Society of Certified Public Accountants, the California Redevelopment Association, and any other authorities in the field that the Controller deems necessary and appropriate.

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

CHAPTER 41

An act to repeal and add Section 5061 of the Business and Professions Code, relating to accountancy.

[Approved by Governor May 22, 1998. Filed with Secretary of State May 22, 1998.]

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

SECTION 1. Section 5061 of the Business and Professions Code is repealed.

SEC. 2. Section 5061 is added to the Business and Professions Code, to read:

5061. (a) Except as expressly permitted by this section, a person engaged in the practice of public accountancy shall not: (1) pay a fee or commission to obtain a client or (2) accept a fee or commission for referring a client to the products or services of a third party.

(b) A person engaged in the practice of public accountancy who is not performing any of the services set forth in subdivision (c) and who complies with the disclosure requirements of subdivision (d) may accept a fee or commission for providing a client with the products or services of a third party where the products or services of a third party are provided in conjunction with professional services provided to the client by the person engaged in the practice of public accountancy. Nothing in this subdivision shall be construed to permit the solicitation or acceptance of any fee or commission solely for the referral of a client to a third party.

(c) A person engaged in the practice of public accountancy is prohibited from performing services for a client for a commission or from receiving a commission from a client during the period in which the person also performs for that client any of the services listed below and during the period covered by any historical financial statements involved in those listed services:

(1) An audit or review of a financial statement.

(2) A compilation of a financial statement when that person expects, or reasonably might expect, that a third party will use the financial statement and the compilation report does not disclose a lack of independence.

(3) An examination of prospective financial information.

(d) A person engaged in the practice of public accountancy who is not prohibited from performing services for a commission, or from receiving a commission, and who is paid or expects to be paid a commission, shall disclose that fact to any client or entity to whom the person engaged in the practice of public accountancy recommends or refers a product or service to which the commission relates.

(e) The board shall adopt regulations to implement, interpret, and make specific the provisions of this section including, but not limited to, regulations specifying the terms of any disclosure required by subdivision (d), the manner in which the disclosure shall be made, and other matters regarding the disclosure that the board deems appropriate. These regulations shall require, at a minimum, that a disclosure shall comply with all of the following:

(1) Be in writing and be clear and conspicuous.

(2) Be signed by the recipient of the product or service.

(3) State the amount of the commission or the basis on which it will be computed.

(4) Identify the source of the payment and the relationship between the source of the payment and the person receiving the payment.

(5) Be presented to the client at or prior to the time the recommendation of the product or service is made.

(f) For purposes of this section, "fee" includes, but is not limited to, a commission, rebate, preference, discount, or other consideration, whether in the form of money or otherwise.

(g) This section shall not prohibit payments for the purchase of any accounting practice or retirement payments to individuals presently or formerly engaged in the practice of public accountancy or payments to their heirs or estates.

SEC. 3. By modifying the regulation of commissions in Section 5061 of the Business and Professions Code, it is not the intent of the Legislature in enacting this act to diminish in any manner the duties of certified public accountants to clients, nor to abrogate regulations of the State Board of Accountancy relating to objectivity.

CHAPTER 42

An act to amend Section 12302.3 of the Welfare and Institutions Code, relating to human services, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 22, 1998. Filed with Secretary of State May 22, 1998.]

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

SECTION 1. Section 12302.3 of the Welfare and Institutions Code is amended to read:

12302.3. (a) Notwithstanding any other provision of this article, and in a manner consistent with the powers available to public authorities created under this article, the City and County of San Francisco may:

(1) Increase the wages of all in-home supportive services providers.

(2) Subject to the requirements of federal law, use county-only funds to fund county and state shares to meet federal financial participation requirements necessary to obtain any available Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396, et seq.) (Medicaid) personal care services reimbursement.

(3) Provide in-home supportive services workers with any wage increase the city and county may appropriate, as long as this amount is in accordance with the provisions of the Medi-Cal State Plan

Amendment 94-006, as approved by the federal Health Care Financing Administration. The county-only funds shall be used exclusively to increase workers wages and to pay any proportionate share of employer taxes and current benefits, and to pay for the cost of state and county administration of these activities as provided for in paragraph (5). Notwithstanding Section 12302.1, any wage increase for those workers employed under contract shall be passed through by the contractor to the workers, subject to the limitations specified in this paragraph. The state shall continue to provide payroll functions for all workers who are currently individual providers unless and until the in-home supportive services public authority is operational.

(4) Claim the administrative costs of the wage passthrough in accordance with the department's claiming requirements.

(5) In the event that federal financial participation is available for county-only payroll moneys, the following shall apply:

(A) If additional payroll costs will be incurred by the state due to the receipt and payment of federal funds, the department shall provide the city and county with a detailed estimate of the additional costs of the provision of payroll functions associated with the processing of federal funds. If the city and county elects to pay the additional costs, the department will provide these payroll functions. If the city and county does not elect to pay the additional costs, the department and the city and county may seek another, mutually satisfactory arrangement.

(B) In the event that federal financial participation is not available, the department shall continue to perform the existing payroll functions provided on July 28, 1995, at no additional cost to the city and county.

(b) (1) This section shall not be implemented with respect to any particular wage increase pursuant to subdivision (a) unless the department has obtained the approval of the State Department of Health Services for that wage increase prior to its execution to determine that it is consistent with federal law and to ensure federal financial participation for the services under Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396, et seq.).

(2) The Director of Health Services shall seek any federal waivers or approvals necessary for implementation of this section under Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396, et seq.).

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 implement changes to social services programs contained in this act necessary for the protection of the health and

well-being of elderly and disabled persons, at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 43

An act to add Section 354.5 to the Code of Civil Procedure, relating to insurance for Holocaust victims, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 22, 1998. Filed with Secretary of State May 22, 1998.]

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

SECTION 1. (a) The Legislature recognizes that thousands of Holocaust survivors and the heirs of Holocaust victims are residents or citizens of the State of California. The Legislature further recognizes and finds that these people have, too often, been deprived of their contractual entitlement to benefits under insurance policies issued by insurance companies operating in Europe prior to and during World War II. California has an overwhelming public policy interest in assuring that its residents and citizens who are claiming entitlement to proceeds under policies issued to Holocaust victims are treated reasonably and fairly and that those contractual obligations are honored.

(b) It is the specific intent of the Legislature to assure that Holocaust victims be permitted to have an expeditious, inexpensive, and fair forum in which to resolve their claims for benefits under these policies by allowing actions to be brought in California courts and subject to California law, irrespective of any contrary forum selection provision contained in the policies themselves. It is the finding of the Legislature that enforcement of forum selection provisions in those policies would work an undue, unreasonable, and unjust hardship on Holocaust victims who are residents of California and that those provisions are unenforceable with respect to the policies as to which this act applies.

(c) To the extent that the statute of limitations regarding contractual or tort claims arising from the denial of benefits under the policies is extended by this act, that extension of the limitations period is intended to be applied retroactively, irrespective of whether the claims were otherwise barred by any applicable statute of limitations under any other provision of law prior to the enactment of this act.

SEC. 2. Section 354.5 is added to the Code of Civil Procedure, to read:

354.5. (a) The following definitions govern the construction of this section:

(1) "Holocaust victim" means any person who was persecuted during the period of 1930 to 1945, inclusive, by Nazi Germany or its allies.

(2) "Related company" means any parent, subsidiary, reinsurer, successor in interest, managing general agent, or affiliate company of the insurer.

(3) "Insurer" means an insurance provider doing business in the state, or whose contacts in the state satisfy the constitutional requirements for jurisdiction, that sold life, annuities, dowry, educational, or casualty insurance covering persons or property to persons in Europe at any time between 1920 and 1945, directly or through a related company.

(b) Notwithstanding any other provision of law, any Holocaust victim, or heir or beneficiary of a Holocaust victim, who resides in this state and has a claim arising out of an insurance policy or policies purchased in Europe between 1920 and 1945 from an insurer described in paragraph (3) of subdivision (a) of this section, may bring a legal action to recover on that claim in any superior court of the state for the county in which the plaintiff or one of the plaintiffs resides, which court shall be vested with jurisdiction over that action until its completion or resolution.

(c) Any action brought by a Holocaust victim or the heir or beneficiary of a Holocaust victim, whether a resident or nonresident of this state, seeking proceeds of the insurance policies issued or in effect between 1920 and 1945 shall not be dismissed for failure to comply with the applicable statute of limitation, provided the action is commenced on or before December 31, 2010.

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 just compensation to aging Holocaust victims, it is necessary that this act take effect immediately.

CHAPTER 44

An act to amend Sections 42290, 42291, 42292, 42293, and 42297 of, to add Sections 42290.5 and 42291.5 to, and to repeal Section 42298 of, the Public Resources Code, relating to solid waste, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 22, 1998. Filed with Secretary of State May 22, 1998.]

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

SECTION 1. Section 42290 of the Public Resources Code is amended to read:

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 117690 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) "Regulated bag" means a plastic trash bag of 0.70 mil or greater thickness that is intended for sale in the state.

(e) "Wholesaler" means any person who purchases plastic trash bags from a manufacturer for resale in this state.

SEC. 2. Section 42290.5 is added to the Public Resources Code, to read:

42290.5. To encourage waste diversion of polyethylene from California landfills as well as to encourage California's postconsumer market development, it is the intent of the Legislature that any certification of postconsumer materials used for compliance with this chapter not be the same materials that are certified or used for compliance with any other state requirement or with any federal requirement that requires the use or reporting of postconsumer materials for plastic products.

SEC. 3. Section 42291 of the Public Resources Code is amended to read:

42291. (a) Until January 1, 1998, 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.

(b) (1) On and after January 1, 1998, the manufacturer's required use of recycled plastic postconsumer material shall be determined pursuant to paragraph (2). Compliance by a manufacturer with either alternative shall be deemed to be compliance with this subdivision.

(2) Every manufacturer of regulated bags shall do one of the following:

(A) Ensure that its plastic trash bags intended for sale in this state contain a quantity of recycled plastic postconsumer material equal to at least 10 percent of the weight of the regulated bags.

(B) Ensure that at least 30 percent of the weight of the material used in all of its plastic products intended for sale in this state is recycled plastic postconsumer material.

(3) Beginning March 1, 1999, and annually thereafter, every manufacturer subject to this subdivision shall certify to the board that it has used the required amount of recycled plastic postconsumer material annually in compliance with paragraph (2).

(c) Any certification of postconsumer materials used for compliance with this chapter shall not include any materials that are certified or used for compliance with any other state or federal requirement that requires the use or reporting of postconsumer materials for any plastic products.

(d) If any manufacturer subject to this section is unable to obtain sufficient amounts of recycled plastic postconsumer material to comply with this section 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. Each manufacturer making that certification shall make a reasonable effort to identify available supplies of material before submitting certification to the board.

(e) The Legislature hereby finds and declares that although the changes made to this section by the act amending this section during the 1998 portion of the 1997–98 Regular Session become effective after January 1, 1998, it is the intent of the Legislature that the new requirements specified in subdivision (b) be effective as of January 1, 1998. The Legislature further finds that this change is requested by the manufacturers subject to this section and that the retroactive effect of these changes will not cause any hardship on any manufacturer subject to this section, or cause any manufacturer to be subject to regulatory action as a result of these changes, but rather, would instead have the effect of preventing hardship to the manufacturers regulated by this section.

SEC. 4. Section 42291.5 is added to the Public Resources Code, to read:

42291.5. Until January 1, 2001, for each pound of recycled plastic postconsumer material purchased from a source of recycled plastic postconsumer material in this state for use in the manufacture of

plastic trash bags, or other products manufactured with recycled plastic postconsumer material in compliance with this chapter, the board shall credit the manufacturer certifying pursuant to Section 42293 with having used 1.2 pounds of recycled plastic postconsumer material toward compliance with the requirements of Section 42291.

SEC. 5. Section 42292 of the Public Resources Code is amended to read:

42292. Each manufacturer shall obtain from its suppliers of recycled plastic postconsumer material for use in the manufacture of plastic trash bags, or other products manufactured with recycled plastic postconsumer material in compliance with this chapter, a statement identifying the quantity, source location, 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.

SEC. 6. Section 42293 of the Public Resources Code is amended to read:

42293. (a) On or before March 1, 1999, and annually thereafter, each manufacturer subject to this chapter 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, or other products manufactured with recycled plastic postconsumer material in compliance with this chapter, 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.

(b) On or before October 1, 2001, the board shall survey manufacturers subject to this section and, notwithstanding Section 7550.5 of the Government Code, report back to the Legislature. The survey shall do all of the following:

(1) Identify the name and physical location of suppliers certified by manufacturers pursuant to subdivision (a).

(2) Identify the quantity of recycled plastic postconsumer material provided by suppliers within the state and the quantity of the material provided by suppliers outside the state.

(3) Provide recommendations regarding recycled plastic postconsumer material content requirements based on the availability of that material.

(4) Identify gauge thickness of all regulated bags.

(5) Determine national production versus production of a separate line for California.

SEC. 7. Section 42297 of the Public Resources Code is amended to read:

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) Annually on or before July 1, the board shall publish a list of any suppliers, manufacturers, or wholesalers who have failed to comply with this chapter.

(c) (1) Any supplier, manufacturer, or wholesaler, and any of its divisions, subsidiaries, or successors, who fails to comply with this chapter, shall be ineligible for the award of any state contract or subcontract, or for the renewal, extension, or modification of an existing contract or subcontract, until the board determines that it is in compliance with this chapter.

(2) No state agency shall solicit offers from, award contracts to, or renew, extend, or modify a current contract or subcontract with, any supplier, manufacturer, or wholesaler, or any of its divisions, subsidiaries, or successors, who fails to comply with this chapter until the board determines that it is in compliance with this chapter.

SEC. 8. Section 42298 of the Public Resources Code is repealed.

SEC. 9. Notwithstanding the repeal of Section 42298 of the Public Resources Code, as provided in Section 8 of this act, any variance issued by the California Integrated Waste Management Board on or before the effective date of this act shall remain in effect until December 31, 1998, and, for purposes of that variance, the variance shall exempt the variance holder from the requirements of Chapter 5.4 (commencing with Section 42290) of Part 3 of Division 30 of the Public Resources Code, as amended by this act, until December 31, 1998. Nothing in Chapter 5.4 (commencing with Section 42290) of Part 3 of Division 30 of the Public Resources Code, or in any variance issued before the effective date of this act, shall be construed as allowing that variance to continue in effect after December 31, 1998.

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 encourage at the earliest possible time the recycling of plastic postconsumer material, thereby conserving resources and protecting public health and safety and the environment, it is necessary that this act take effect immediately.

CHAPTER 45

An act to amend Section 21701 of, and to add Section 21701.1 to, the Business and Professions Code, relating to self-service storage facilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 28, 1998. Filed with
Secretary of State May 29, 1998.]

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

SECTION 1. Section 21701 of the Business and Professions Code is amended to read:

21701. For the purposes of this chapter, the following terms shall have the following meanings:

(a) "Self-service storage facility" means real property designed and used for the purpose of renting or leasing individual storage space to occupants who are to have access to the space for the purpose of storing and removing personal property or for storing individual storage containers provided to occupants who have exclusive use of the container for the purpose of storing and removing personal property, whether or not the individual storage containers are transported pursuant to Section 21701.1. Self-service storage facility does not include a garage or other storage area in a private residence. No occupant may use a self-service storage facility for residential purposes. A self-service storage facility is not a warehouse, nor a public utility, as defined in Section 216 of the Public Utilities Code. If an owner issues a warehouse receipt, bill of lading, or other document of title for the personal property stored, the owner and the occupant are subject to the provisions of Division 7 (commencing with Section 7101) of the Commercial Code, and the provisions of this chapter do not apply.

(b) "Owner" means the owner, operator, lessor, or sublessor of a self-service storage facility, his or her agent, or any other person authorized by him or her to manage the facility, or to receive rent from an occupant under a rental agreement, and no real estate license is required.

(c) "Occupant" means a person, or his or her sublessee, successor, or assign, who is entitled to the use of the storage space at a self-service storage facility under a rental agreement, to the exclusion of others.

(d) "Rental agreement" means any written agreement or lease which establishes or modifies the terms, conditions, rules, or any other provision concerning the use and occupancy of a self-service storage facility.

(e) "Personal property" means movable property not affixed to land, and includes, but is not limited to, goods, merchandise, furniture, and household items.

(f) "Last known address" means that address provided by the occupant in the latest rental agreement, or the address provided by the occupant in a subsequent written notice of a change of address.

SEC. 2. Section 21701.1 is added to the Business and Professions Code, to read:

21701.1. (a) The owner or operator of a self-service storage facility, or a household goods carrier, may, for a fee, transport individual storage containers to and from a self-service storage facility that he or she owns or operates. This transportation activity whether performed by an owner, operator, or carrier, shall not be deemed transportation for compensation or hire as a business of used household goods and is not subject to regulation under Chapter 7 (commencing with Section 5101) of Division 2 of the Public Utilities Code, provided all of the following requirements are met:

(1) The fee charged (A) to deliver an empty individual storage container to a customer and to transport the loaded container to a self-service storage facility, or (B) to return a loaded individual storage container from a self-service storage facility to the customer does not exceed one hundred dollars ($100).

(2) The owner, operator, or carrier, or any affiliate of the owner, operator, or carrier, does not load, pack, or otherwise handle the contents of the container.

(3) The owner, operator, or carrier is registered under Chapter 2 (commencing with Section 34620) of Division 14.85 of the Vehicle Code or holds a permit under Chapter 7 (commencing with Section 5101) of Division 2 of the Public Utilities Code.

(4) The owner, operator, or carrier has procured and maintained cargo insurance in the amount of at least twenty thousand dollars ($20,000) per shipment. Proof of cargo insurance coverage shall be maintained on file and presented to the Department of Motor Vehicles or Public Utilities Commission upon written request.

(5) The owner, operator, or carrier shall disclose to the customer in advance the following information regarding the container transfer service offered, in a written document separate from others furnished at the time of disclosure:

(A) A detailed description of the transfer service, including a commitment to use its best efforts to place the container in an appropriate location designated by the customer.

(B) The dimensions and construction of the individual storage containers used.

(C) The unit charge, if any, for the container transfer service, in addition to the storage charge or any other fees under the rental agreement.

(D) The availability of delivery or pickup by the customer of his or her goods at the self-service storage facility.

(E) The maximum allowable distance, measured from the self-service storage facility, for the initial pickup and final delivery of the loaded container.

(F) The precise terms of the company's right to move a container from the initial storage location at its own discretion, and a statement that the customer will not be required to pay additional charges with respect to that transfer.

(G) Conspicuous disclosure in bold text of the allocation of responsibility for the risk of loss or damage to the customer's goods, including any disclaimer of the company's liability, and the procedure for presenting any claim regarding loss or damage to the company.

The disclosure of terms and conditions required by this subdivision, and the rental agreement, shall be received by the customer a minimum of 72 hours prior to delivery of the empty individual storage container; however, the customer may, in writing, knowingly and voluntarily waive that receipt. The company shall record in writing and retain for a period of at least six months after the end of the rental the time and method of delivery of the information, any waiver made by the customer, and the times and dates of initial pickup and redelivery of the containerized goods.

(6) No later than the time the empty individual storage container is delivered to the customer, the company shall provide the customer with an informational brochure containing the following information about loading the container:

(A) Packing and loading tips to minimize damage in transit.

(B) A suggestion that the customer make an inventory of the items as they are loaded, and keep any other record (for example, photographs, videotape) that may assist in any subsequent claims processing.

(C) A list of items that are impermissible to pack in the container (for example, flammable items).

(D) A list of items that are not recommended to be packed in light of foreseeable hazards inherent in the company's handling of the containers, and in light of any limitation of liability contained in the rental agreement.

(b) Pickup and delivery of the individual storage containers shall be on a date agreed upon between the customer and the company. If the company requires the customer to be physically present at the time of pickup, the company shall in fact be at the customer's premises prepared to perform the service not more than four hours later than the scheduled time agreed to by the customer and company, and in the event of a preventable breach of that obligation by the company, the customer shall be entitled to receive a penalty of fifty dollars ($50) from the company and to elect rescission of the rental agreement without liability.

(c) No charge shall be assessed with respect to any movement of the container between self-service storage facilities by the company at its own discretion, nor for the delivery of a container to a customer's premises if the customer advises the company, at least 24 hours before the agreed time of container drop off, orally or in writing, that he or she is rescinding the request for service.

(d) For purposes of this chapter, "individual storage container" means a container that meets all of the following requirements:

(1) It shall be fully enclosed and locked.

(2) It contains not less than 100 and not more than 1,100 cubic feet.

(3) It is constructed out of a durable material appropriate for repeated use. A box constructed out of cardboard or a similar material shall not constitute an individual storage container for purposes of this section.

(e) Nothing in this section shall be construed to limit the authority of the Public Utilities Commission to investigate and commence an appropriate enforcement action pursuant to Chapter 7 (commencing with Section 5101) of Division 2 of the Public Utilities Code against any person transporting household goods in individual storage containers in a manner other than that described in this section.

SEC. 3. The amendment to Section 21701 of the Business and Professions Code contained in Section 1 of this act is intended to extend the coverage of the California Self-Service Storage Facility Act to real property designed to store individual storage containers. In making this change, it is not the intent of the Legislature to modify the landlord-tenant relationship that exists under current law between self-service storage facility owners and occupants. An owner of a self-service storage facility when renting or leasing individual storage spaces to occupants, who are to have access to the space for the purpose of storing or removing personal property, is a commercial landlord and does not have care, custody, or control of the occupants' stored personal property. Further, by adding Section 21701.1 to the Business and Professions Code, which describes the transportation activities that may be provided without a household goods carrier permit, the Legislature does not intend to limit the ability of an owner or operator of a self-service storage facility to otherwise transport household goods under the authority of a household goods carrier permit.

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 the application of the Household Goods Carriers Act, and to ensure appropriate protections for customers transporting goods in individual storage containers, it is necessary that this act take effect immediately.

CHAPTER 46

An act to amend Section 12005 of the Fish and Game Code, relating to wildlife, and making an appropriation therefor.

[Approved by Governor May 28, 1998. Filed with Secretary of State May 29, 1998.]

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

SECTION 1. The Legislature finds and declares that the majority of individuals engaged in hunting activities comply with the statutes and regulations as set forth in the Fish and Game Code. It is the intent of the Legislature to enact legislation that will provide sufficient penalties, commensurate with the severity of the violation, for those individuals who are not representative of the sporting hunting body, but who knowingly engage in the selling of bear parts in the State of California.

The Legislature further finds and declares that the illegal sale of bear parts is a serious offense which warrants special consideration by law enforcement and the judiciary. In order to deter persons from engaging in the illegal trade of bear parts, the Legislature finds that setting a minimum penalty is necessary. The Legislature intends that any violation of Section 4758 of the Fish and Game Code be diligently pursued and fully adjudicated.

SEC. 2. Section 12005 of the Fish and Game Code is amended to read:

12005. (a) Notwithstanding Section 12000, and except as otherwise provided in subdivision (c), the punishment for each violation of Section 4758 shall include both of the following:

(1) A fine of two hundred fifty dollars ($250) for each bear part. As used in this paragraph, "bear part" means an individual part or group of like parts of any bear that the defendant knowingly and unlawfully sells, purchases, or possesses for sale. For the purposes of this paragraph, claws, paws, or teeth from a single bear that are knowingly purchased, sold, or possessed for sale with the intent that they be delivered to a single end user shall be considered a single part.

(2) An additional fine of not more than five thousand dollars ($5,000), imprisonment in the state prison or the county jail for not more than one year, or both the fine and imprisonment.

(b) If the conviction is for the possession of two bear gall bladders and probation is granted, or if the execution or imposition of sentence is suspended, it shall be a condition thereof that a minimum term of 30 days shall be served in the county jail.

(c) (1) The possession of three or more bear gall bladders is punishable by both of the following:

(A) The fine specified in paragraph (1) of subdivision (a).

(B) An additional fine of not more than ten thousand dollars ($10,000), imprisonment in the county jail for not more than one year, or both that fine and imprisonment.

(2) If probation is granted, or the execution or imposition of sentence is suspended, it shall be a condition thereof that a minimum term of three months shall be served in the county jail.

(d) Consecutive sentences shall be imposed for separate violations of 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 that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 47

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

[Approved by Governor May 28, 1998. Filed with Secretary of State May 29, 1998.]

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

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

(a) The health care delivery system is undergoing rapid and dramatic change. Services are increasingly provided by a variety of managed care structures, including different types of health maintenance organizations (HMOs), preferred provider organizations (PPOs), and a growing array of hybrid models that have elements of traditional fee-for-service and indemnity systems while applying managed care's utilization management, gatekeeper, and case management techniques. Many consumers are confused about how managed care works or have problems navigating the health care system.

(b) The Center for Health Care Rights, an independent nonprofit consumer organization, has established a Pilot Health Care Consumers' Information and Assistance Program in the Sacramento area to help consumers in managed care. The pilot program's goals are to be an accessible source of information and help for health care consumers, collect needed information, and be an advocate to improve how the health care system works for all managed care consumers. The pilot program is independent from, but works in close collaboration with, existing health plans, providers, purchasers, insurance agents and brokers, consumer groups, and regulators. The pilot program is specifically working in partnership with the local

Health Insurance Counseling and Advocacy Program, which serves Medicare beneficiaries in target communities.

(c) The pilot program educates consumers about their rights and responsibilities. It also assists individuals with questions about their health plan, and those with specific problems, through hotline and in-person services. In addition, the pilot program will collect and analyze information, generated both by consumers' use of the pilot program and from other sources, that can identify the strengths and weaknesses of particular plans, provider groups, or delivery systems. The pilot program has the potential of informing health plans, providers, purchasers, consumers, regulators, and the Legislature about how independent support can be provided to consumers in managed care.

(d) Maintaining consumer confidence is a paramount concern in the operation of the pilot program. While one vehicle to protect these communications would be to establish attorney-client relationships with consumers served, the pilot program is not designed as a "legal" program and it would undercut its collaborative strategy and problemsolving orientation if assistance were required to be positioned in a legal context. Furthermore, it is critical that consumers using the pilot program are free from any retribution.

SEC. 2. (a) The Legislature recognizes that the Pilot Health Care Consumers' Information and Assistance Program (the pilot program), serving the greater Sacramento area, has the potential to provide needed education and assistance to individual consumers and provide the public with critical information about the health care system and how consumers can best be assisted. While the pilot program is not being supported with public funds, it serves an important public interest.

(b) No discriminatory, disciplinary, or retaliatory action shall be taken against any health facility, health care service plan, provider, or their employee, subscriber, enrollee, or agent of the subscriber or enrollee or any other recipient of health care services or individual assisting the recipient of health care services, if the communication is made to the pilot program regarding a grievance or complaint and is intended to assist the pilot program in carrying out its duties and responsibilities, unless the action was done maliciously or without good faith. This subdivision is not intended to allow for the unapproved release of confidential or proprietary information by an employee or contractor, or to otherwise infringe on the rights of the employer to supervise, discipline, or terminate an employee for other reasons.

(c) All communications between a representative of the pilot program and a subscriber or enrollee, or agent of the subscriber or enrollee, or any other recipient of health care services or any individual assisting the recipient of health care services, seeking assistance regarding a grievance or complaint, if reasonably related to the requirements of the representative's responsibilities for the

pilot program, and done in good faith, shall be privileged subject to Division 8 (commencing with Section 900) of the Evidence Code. The subscriber, enrollee, or other recipient of health care services shall be the holder of this privilege and may refuse to disclose, and may prevent others from disclosing, a communication described in this subdivision. Any communication described in this subdivision shall be a privileged communication within the meaning of Section 47 of the Civil Code, which shall serve as a defense to any civil action in libel or slander against any of the persons described in this subdivision.

(d) Any representative of the pilot program shall be exempt from being required to testify in court as to any communications described in subdivision (c) except as the court may deem necessary to fulfill the purposes of the pilot program.

(e) All records and files of the pilot program relating to any complaint or request for assistance regarding a subscriber or enrollee, or any other recipient of health care services, and their identity, shall remain confidential, and shall not be subject to discovery, unless disclosure is authorized by the subscriber or enrollee, or any other recipient of health care services, or his or her legal representative. No disclosures shall be made outside of the pilot program without the consent of the subscriber or enrollee, or any other recipient of health care services, that is the subject of the record or file, unless disclosure is made without disclosing the identity of that individual.

(f) Nothing in this section shall be construed to limit the authority and ability of the California Department of Aging or its contractors, or the direct service providers of the Health Insurance Counseling and Advocacy Program (HICAP), from accessing, monitoring, or reviewing case files and records developed by, or for, the HICAP component of this project. All case records and files of HICAP clients are, and shall remain, the property of HICAP, subject to case file and record retention and disposal requirements established by the Department of Aging. For the purposes of this section, "HICAP clients" are defined as those accepted, initiated, and undertaken on behalf of consumers and clients who are 60 years of age or older, Medicare beneficiaries regardless of age, or their legal representatives.

(g) This section shall remain in effect only until June 30, 2000, and as of that date is repealed, unless a later enacted statute, that is enacted before June 30, 2000, deletes or extends that date. Notwithstanding this date of repeal, the privileges and protections provided under this section shall continue to apply to any actions taken or materials collected after June 30, 2000, if they relate to communications or actions made on or before June 30, 2000.

(h) Nothing in this section shall be construed to limit the ability of the subscriber or enrollee, or any other recipient of health care services, to waive the privileges and protections provided by this

section for the purpose of providing information to a regulatory agency, including, but not limited to, the Department of Corporations and the Department of Insurance.

(i) Nothing in this section shall be construed to supercede the procedures set forth in Sections 1368, 1368.01, 1368.02, and 1368.03 of the Health and Safety Code, when the pilot program is providing assistance to a subscriber or enrollee in connection with a complaint against a health care service plan.

(j) For purposes of this section, a health care service plan, provider, subscriber, or enrollee shall have the same meaning as set forth in Section 1345 of the Health and Safety Code, an agent of a subscriber or enrollee shall have the same meaning as set forth in subdivision (b) of Section 1368 of the Health and Safety Code, and a health facility shall have the same meaning as set forth in Section 1250 of the Health and Safety Code.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make confidentiality protections available immediately for communications between patients and representatives of a nonprofit pilot program to assist patients to resolve concerns about their health care plans, it is necessary that this act take effect immediately.

CHAPTER 48

An act to amend Sections 25017, 25101.1, 25102.1, 25202, 25230.1, 25608.1, and 25611 of, and to add Section 25009.1 to, the Corporations Code, relating to corporations.

[Approved by Governor May 28, 1998. Filed with Secretary of State May 29, 1998.]

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

SECTION 1. Section 25009.1 is added to the Corporations Code, to read:

25009.1. "Investment adviser" does not include persons excepted from the definition of "investment adviser" by Section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80a-1 et seq., as amended), except that with regard to those persons the commissioner may investigate and bring enforcement actions with respect to fraud and deceit, including and without limitation fraud and deceit under Section 25235, and any rules of the commissioner adopted thereunder.

SEC. 2. Section 25017 of the Corporations Code is amended to read:

25017. (a) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value. "Sale" or "sell" includes any exchange of securities and any change in the rights, preferences, privileges, or restrictions of or on outstanding securities.

(b) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

(c) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing constitutes a part of the subject of the purchase and is considered to have been offered and sold for value.

(d) A purported gift of assessable stock involves an offer and sale.

(e) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, includes an offer and sale of the other security only at the time of the offer or sale of the warrant or right or convertible security; but neither the exercise of the right to purchase or subscribe or to convert nor the issuance of securities pursuant thereto is an offer or sale.

(f) The terms defined in this section do not include: (1) any bona fide secured transaction in or loan of outstanding securities; (2) any stock dividend payable with respect to common stock of a corporation solely (except for any cash or scrip paid for fractional shares) in shares of such common stock, if the corporation has no other class of voting stock outstanding; provided, that shares issued in any such dividend shall be subject to any conditions previously imposed by the commissioner applicable to the shares with respect to which they are issued; or (3) any act incident to a transaction or reorganization approved by a state or federal court in which securities are issued and exchanged for one or more outstanding securities, claims, or property interests, or partly in that exchange and partly for cash, and nothing in this division shall be construed to prohibit a court from applying the protections described in Section 25014.7 or 25140 and the regulations adopted thereunder when approving any transaction involving a rollup participant.

SEC. 3. Section 25101.1 of the Corporations Code is amended to read:

25101.1. The following securities are not subject to Sections 25110, 25120, and 25130:

(a) A security that is offered or sold in a transaction that is exempt from registration under Section 4(1) or 4(3) of the Securities Act of 1933 (15 U.S.C. 77r) pursuant to Section 18(b)(4)(A) of that act, if the issuer, other than a foreign (other country) issuer described in

subdivision (b), of the security files the required reports with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, (15 U.S.C. 78a et seq.).

(b) A security of a foreign (other country) issuer that avails itself of the exemption from registration under Section 12(g)(3) of the Securities Exchange Act of 1934 is subject to the qualification requirements of Sections 25110, 25120, and 25130, unless the issuer is a reporting company under the Securities Exchange Act of 1934 and files the required reports under Section 13 or 15(d) of that act.

SEC. 4. Section 25102.1 of the Corporations Code is amended to read:

25102.1. The following transactions are not subject to Sections 25110, 25120, and 25130:

(a) Any offer or sale of a security to a "qualified purchaser" as that term is defined by rule of the Securities and Exchange Commission pursuant to Section 18(b)(3) of the Securities Act of 1933 (15 U.S.C. 77r), and all the following requirements are met:

(1) A notice is filed with the commissioner prior to an offer in this state, along with any documents filed with the Securities and Exchange Commission in annual or periodic reports that the commissioner by rule or order deems appropriate.

(2) A consent to service of process under Section 25165 is filed with the notice required by paragraph (1).

(3) Payment of a notice filing fee provided for in subdivision (b) of Section 25608.1.

(b) Any offer and sale of a security with respect to a transaction that is exempt from registration under Section 4(4) of the Securities Act of 1933 pursuant to Section 18 (b) (4) (B) of that act.

(c) Any offer or sale of a security with respect to a transaction that is exempt from registration under the Securities Act of 1933 pursuant to Section 18(b)(4)(C) of that act.

(d) Any offer or sale of a security with respect to a transaction that is exempt from registration under the Securities Act of 1933 pursuant to Section 18(b)(4)(D) of that act, and all the following requirements are met:

(1) A notice in the form of a copy of the completed Form D (17 C.F.R. 239.500) filed with the Securities and Exchange Commission is filed with the commissioner within 15 days of the first sale in this state, along with documents filed with the Securities and Exchange Commission in annual or periodic reports that the commissioner by rule or order deems appropriate.

(2) A consent to service of process under Section 25165 is filed with the notice as required by paragraph (1).

(3) Payment of the notice filing fee provided for in subdivision (c) of Section 25608.1.

(e) Notwithstanding the language of subdivisions (a), (b), (c), and (d) of this section, an issuer may file an application for

qualification pursuant to Sections 25111, 25112, 25113, 25121, 25131, or 25142.

SEC. 5. Section 25202 of the Corporations Code is amended to read:

25202. (a) An investment adviser shall not be subject to Section 25230 if (1) the investment adviser does not have a place of business in this state and (2) during the preceding 12-month period has had fewer than six clients who are residents of this state.

(b) For the purpose of this section only, "client" has the same meaning as the term "client" is defined by the Securities and Exchange Commission under the rule adopted pursuant to Section 222(d) of the Investment Advisers Act of 1940, as amended. Also, for the purpose of this section only, "client" does not mean other investment advisers, broker-dealers, banks, savings and loan associations, trust companies, insurance companies, investment companies registered under the Investment Company Act of 1940, pension and profit-sharing trusts (other than self-employed individual retirement plans), or other institutional investors or governmental agencies or instrumentalities designated by rule or order of the commissioner.

SEC. 6. Section 25230.1 of the Corporations Code is amended to read:

25230.1. (a) A person that is registered under Section 203 of the Investment Advisers Act of 1940 as an investment adviser is not subject to the requirement of obtaining a certificate under Section 25230, but may not conduct business in this state unless the person has fewer than six clients as specified in Section 25202 or unless the person first complies with subdivision (b). An investment adviser representative that has a place of business in this state may be required to obtain a certificate pursuant to Section 25231.

(b) A person subject to subdivision (a) shall:

(1) File with the commissioner an annual notice, consisting of those documents filed with the Securities and Exchange Commission pursuant to the securities laws that the commissioner by rule or order deems appropriate or, in lieu thereof, a form prescribed by the commissioner, and a consent to service of process under Section 25240.

(2) Pay the notice filing fee provided for in subdivision (d) of Section 25608.1.

(c) No investment adviser representative, on behalf of an investment adviser subject to subdivision (a), may, in this state: offer or negotiate for the sale of investment advisory services of the investment adviser; determine which recommendations shall be made to, make recommendations to, or manage the accounts of, clients of the investment adviser; or determine the reports or analysis concerning securities to be published by the investment adviser, unless the investment adviser representative has complied with rules

that the commissioner may adopt for the qualification and employment of investment adviser representatives.

(d) Subdivision (a) does not prohibit the commissioner from investigating and bringing enforcement actions with respect to fraud or deceit, including and without limitation, fraud or deceit under Section 25235 and the rules of the commissioner adopted thereunder, against an investment adviser or an investment adviser representative.

SEC. 7. Section 25608.1 of the Corporations Code is amended to read:

25608.1. (a) The fee for an investment company filing a notice pursuant to subdivision (b) of Section 25100.1 is two hundred dollars ($200) plus one-fifth of 1 percent of the aggregate value of the securities sought to be sold in this state up to a maximum aggregate fee of two thousand five hundred dollars ($2,500).

(b) The fee for an issuer filing a notice pursuant to subdivision (a) of Section 25102.1 is six hundred dollars ($600).

(c) The fee for an issuer filing a notice pursuant to subdivision (d) of Section 25102.1 is three hundred dollars ($300).

(d) The fee for an investment adviser filing a notice pursuant to subdivision (b) of Section 25230.1 is one hundred twenty-five dollars ($125) and the fee for filing a notice or report required by rule adopted pursuant to subdivision (c) of Section 25230.1 is twenty-five dollars ($25).

SEC. 8. Section 25611 of the Corporations Code is amended to read:

25611. The commissioner may prepare and make available to interested persons lists of persons whose securities are qualified for trading purposes in this state, are exempt from qualification, or are not subject to qualification as the commissioner may determine to be necessary or desirable, and the commissioner may make reasonable charges for those lists to defray the expenses of preparation and dissemination.

SEC. 9. In enacting Section 2 of this act, the Legislature finds and declares that the Thompson-Killea Limited Partnership Act of 1992 added specified protections for limited partners in connection with rollup transactions, and that the courts may be reviewing rollup transactions through the court approval process without recognizing the availability of the important protections afforded to investors under the Corporate Securities Law of 1968. Therefore, the courts are encouraged to apply the protections described in Section 25014.7 or 25140 of the Corporations Code and any regulations adopted thereunder to ensure that these investor protections are not overlooked or avoided through the court approval process.

CHAPTER 49

An act to amend Sections 17052.10, 17053.14, 17053.45, 17053.46, 17053.49, 17053.66, 17268, 17276, 19011, 19551, and 23666 of, and to repeal Chapter 1.5 (commencing with Section 23081) of, Chapter 1.6 (commencing with Section 23091) of, and Chapter 1.7 (commencing with Section 23097) of, Part 11 of Division 2 of, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor May 28, 1998. Filed with Secretary of State May 29, 1998.]

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

SECTION 1. Section 17052.10 of the Revenue and Taxation Code is amended to read:

17052.10. (a) For each taxable year beginning on or after January 1, 1997, and before January 1, 2008, there shall be allowed as a credit against the amount of "net tax," as defined in Section 17039, an amount equal to fifteen dollars ($15) for each ton of rice straw, as defined in Section 18944.33 of the Health and Safety Code, that is grown within California and purchased during the taxable year by the taxpayer.

(b) The aggregate amount of tax credits granted to all taxpayers pursuant to this section and Section 23610 shall not exceed four hundred thousand dollars ($400,000) for each calendar year.

(c) 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" for the next 10 taxable years, or until the credit has been exhausted, whichever occurs first.

(d) No deduction shall be claimed for the purchase of rice straw for which a tax credit has been claimed pursuant to this section.

(e) No credit shall be claimed for the purchase of rice straw for which a tax credit has otherwise already been claimed pursuant to this part.

(f) The Department of Food and Agriculture shall do all of the following:

(1) Certify that the taxpayer has purchased the rice straw as specified in subdivision (a).

(2) Issue certificates in an aggregate amount that shall not exceed the limit specified in subdivision (b). The certificates shall be issued on a "first come, first served" basis to reflect the chronological order that the taxpayer submitted a valid request to the Department of Food and Agriculture.

(3) Provide an annual listing to the Franchise Tax Board (preferably on computer readable form, and in a form or manner agreed upon by the Franchise Tax Board and the Department of

Food and Agriculture) of the qualified taxpayers who were issued certificates and the amount of rice straw purchased by each taxpayer.

(4) Provide the taxpayer with a copy of the certification to retain for his or her records.

(5) Obtain the taxpayer's identification number, and in the case of a partnership, the taxpayer identification numbers of all partners.

(6) On or before each June 1 immediately following each year for which the credit under this section is available, provide to the Legislature an informational report with respect to that year that includes all of the following:

(A) The number of tax credit certificates requested and issued.

(B) The type of businesses receiving the tax credit certificates.

(C) A general list of the methods used to process the rice straw.

(D) Recommendations on how the credits can be issued in a manner which will maximize the long-term use of the California grown rice straw.

(g) To be eligible for the credit under this section the taxpayer shall do all of the following:

(1) As part of the taxpayer's allocation request for tax credits, provide the Department of Food and Agriculture with documents, as deemed necessary by the department, verifying the purchase of rice straw and that it meets the requirements specified in this section.

(2) Retain for his or her records a copy of the certificate issued by the Department of Food and Agriculture as specified in subdivision (f).

(3) Provide a copy of the certification specified in subdivision (f) to the Franchise Tax Board upon request. If the taxpayer fails to comply with the requirements of this subdivision, no credit shall be allowed to that taxpayer under this section for any taxable year unless the taxpayer subsequently complies.

(4) Provide the Department of Food and Agriculture with his or her taxpayer identification number, and in the case of a partnership, the taxpayer identification numbers of all partners.

(h) (1) For purposes of this section, a credit shall be allowed only if the taxpayer is the "end user" of the rice straw. For purposes of this section, "end user" shall mean anyone who uses the rice straw for processing, generation of energy, manufacturing, export, prevention of erosion, or for any other purpose, exclusive of open burning, that consumes the rice straw.

(2) The credit shall not be allowed if the taxpayer is related, within the meaning of Section 267 or 318 of the Internal Revenue Code, to any person who grew the rice straw within California.

(i) This section shall remain in effect only until December 1, 2008, and as of that date is repealed.

SEC. 2. Section 17053.14 of the Revenue and Taxation Code is amended to read:

17053.14. (a) (1) For taxable years beginning on or after January 1, 1997, there shall be allowed as a credit against the "net tax,"

as defined in Section 17039, an amount equal to the lesser of 50 percent of the qualified amount, as determined under subdivision (b), or the amount allocated under paragraph (2) of subdivision (e).

(2) Notwithstanding paragraph (1), no credit shall be allowed until the qualified year, as defined in paragraph (3).

(3) For purposes of this section, the "qualified year" is the first taxable year during which the construction or rehabilitation of the qualified farmworker housing is completed and there is occupancy of the qualified farmworker housing by eligible farmworkers.

(b) (1) For purposes of this section, the "qualified amount" shall be equal to the sum of all costs paid or incurred to construct, in the case of new construction, or rehabilitate, farmworker housing to meet the requirements of the Employee Housing Act (Part 1 (commencing with Section 17000) of Division 13 of the Health and Safety Code), and any general improvement costs directly related thereto, including, but not limited to, improvements to ensure compliance with laws governing access for persons with disabilities and costs related to reducing utility expenses.

(2) For purposes of paragraph (1), construction or rehabilitation of the farmworker housing shall have commenced on or after January 1, 1997.

(3) Notwithstanding any other provision of this part, the qualified amount shall not include any costs paid or incurred prior to January 1, 1997.

(c) Notwithstanding any other provision of this part, no credit shall be allowed under this section unless the taxpayer first obtains a certification from the committee that the amounts described in subdivision (b) qualify for the credit under this section and the total amount of the credit allocated to the taxpayer pursuant to the Farmworker Housing Assistance Program.

(d) The taxpayer shall do all of the following:

(1) Apply to the committee for credit certification prior to the payment or incurrence of costs described in paragraph (1) of subdivision (b).

(2) Retain a copy of the certification.

(3) Make the certification available to the Franchise Tax Board upon request.

(e) The committee shall do all of the following:

(1) Provide forms and instructions for applications for credit certification, as specified pursuant to the Farmworker Housing Assistance Program.

(2) Accept applications and issue a certificate to the taxpayer that includes a certification as to the qualified expenditures described in subdivision (b) that qualify for the credit and the total amount of the credit to which the taxpayer is entitled for the taxable year. Credits shall be allocated through a minimum of one competitive funding round per year.

(3) Obtain the taxpayer's taxpayer identification number, and each partner's taxpayer identification number in the case of a partnership, for tax administration purposes.

(4) Provide an annual listing to the Franchise Tax Board, in the form and manner agreed upon by the Franchise Tax Board and the committee, containing the names, taxpayer identification numbers pursuant to paragraph (3), qualified expenditures, and total amount of credit certified to each taxpayer.

(f) For purposes of this section:

(1) "Compliance period" means, with respect to any farmworker housing, the period of 30 consecutive taxable years, beginning with the taxable year in which the credit is allowable.

(2) "Construct or rehabilitate" includes reconstruction, but does not include any costs related to acquisition or refinancing of property or structures thereon.

(3) "Employee Housing Act" means Part 1 (commencing with Section 17000) of Division 13 of the Health and Safety Code.

(4) "Farmworker Housing Assistance Program" means Chapter 3.7 (commencing with Section 50199.50) of Part 1 of Division 31 of the Health and Safety Code.

(5) "Qualified farmworker housing" means housing located within this state which satisfies the requirements of the Farmworker Housing Assistance Program. The housing may be vacant or occupied, and it need not be licensed pursuant to the Employee Housing Act at the time of the initiation of construction or rehabilitation.

(6) "Committee" means the California Tax Credit Allocation Committee as defined in Section 50199.7 of the Health and Safety Code.

(7) "Qualified accountant" means an accountant licensed or certified in this state who is neither an employee of the taxpayer nor related to the taxpayer, within the meaning of Section 267 of the Internal Revenue Code.

(g) No deduction or other credit shall be allowed under this part or Part 11 (commencing with Section 23001) to the extent of any qualified amounts, as defined in subdivision (b), that are taken into account in computing the credit allowed under this section.

(h) The farmworker housing tax credit shall not be allowed unless the taxpayer:

(1) Constructs or rehabilitates the property subject to the covenants, conditions, and restrictions imposed by this section and pursuant to the Farmworker Housing Assistance Program, which shall include, but not necessarily be limited to, a requirement that the taxpayer obtain, for approval by the committee, a construction cost audit and certification of qualified expenditures from a qualified accountant.

(2) Subsequent to construction or rehabilitation of the farmworker housing, owns or operates the farmworker housing

pursuant to the requirements of this section, or ensures the ownership and operation of the farmworker housing pursuant to the requirements of this section.

(i) The requirements of this section shall be set forth in a written agreement between the committee and the taxpayer. The agreement shall include, but not necessarily be limited to, the requirements set forth in the Farmworker Housing Assistance Program.

(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) (1) In the case of any disqualifying event, as defined in paragraph (2), there shall be added to the "net tax," as defined in Section 17039, for the taxable year in which the disqualifying event occurs, the recapture amount computed under paragraph (3) and the interest amount computed under paragraph (4).

(2) For purposes of this subdivision, "disqualifying event" shall mean:

(A) The committee determines that the certification provided under subdivision (e) was obtained by fraud or misrepresentation.

(B) The taxpayer fails to comply with the requirements of the Employee Housing Act, if applicable, the Farmworker Housing Assistance Program, or any other requirement imposed under this section.

(3) For purposes of this subdivision, "recapture amount" means:

(A) In the case of any disqualifying event described in subparagraph (A) of paragraph (2), the entire amount of any credit previously allowed under this section.

(B) In the case of any disqualifying event described in subparagraph (B) of paragraph (2), an amount determined by multiplying the entire amount of the credit previously allowed under this section by a fraction, the numerator of which is the number of years remaining in the compliance period and the denominator of which is 30.

(4) For purposes of this subdivision, "interest amount" means:

(A) In the case of any disqualifying event described in subparagraph (A) of paragraph (2), the amount of interest computed using the adjusted annual rate established in Section 19521 from the due date of the return for each taxable year in which the credit was claimed to the date of the payment of the additional tax resulting from the application of this subdivision.

(B) In the case of any disqualifying event described in subparagraph (B) of paragraph (2), zero.

(*l*) The annual amount of credit granted pursuant to this section and Sections 23608.2 and 23608.3 shall not exceed five hundred thousand dollars ($500,000), provided that the aggregate amount of the credit granted pursuant to this section and Sections 23608.2 and

23608.3 for the 1998 calendar year and thereafter may exceed five hundred thousand dollars ($500,000) per calendar year by an amount equal to any unallocated credits under this section and Sections 23608.2 and 23608.3 for the preceding calendar year or years.

SEC. 3. Section 17053.45 of the Revenue and Taxation Code is amended to read:

17053.45. (a) For each taxable year beginning on or after January 1, 1995, and before January 1, 2003, there shall be allowed as a credit against the "net tax" (as defined by Section 17039) an amount equal to the sales or use tax paid or incurred by the taxpayer in connection with the purchase of qualified property to the extent that the qualified property does not exceed a value of one million dollars ($1,000,000).

(b) For purposes of this section:

(1) "LAMBRA" means a local agency military base recovery area designated in accordance with Section 7114 of the Government Code.

(2) "Taxpayer" means a taxpayer that conducts a trade or business within a LAMBRA and, for the first two taxable years, has a net increase in jobs (defined as 2,000 paid hours per employee per year) of one or more employees in the LAMBRA.

(A) The net increase in the number of jobs shall be determined by subtracting the total number of full-time employees (defined as 2,000 paid hours per employee per year) the taxpayer employed in this state in the taxable year prior to commencing business operations in the LAMBRA from the total number of full-time employees the taxpayer employed in this state during the second taxable year after commencing business operations in the LAMBRA. For taxpayers who commence doing business in this state with their LAMBRA business operation, the number of employees for the taxable year prior to commencing business operations in the LAMBRA shall be zero. If the taxpayer has a net increase in jobs in the state, the credit shall be allowed only if one or more full-time employees is employed within the LAMBRA.

(B) The total number of employees employed in the LAMBRA shall equal the sum of both of the following:

(i) The total number of hours worked in the LAMBRA for the taxpayer by employees (not to exceed 2,000 hours per employee) who are paid an hourly wage divided by 2,000.

(ii) The total number of months worked in the LAMBRA for the taxpayer by employees who are salaried employees divided by 12.

(C) In the case of a taxpayer who first commences doing business in the LAMBRA during the taxable year, for purposes of clauses (i) and (ii), respectively, of subparagraph (B), the divisors "2,000" and "12" shall be multiplied by a fraction, the numerator of which is the number of months of the taxable year that the taxpayer was doing business in the LAMBRA and the denominator of which is 12.

(3) "Qualified property" means the purchase of any of the following for exclusive use in a LAMBRA:

(A) High technology equipment, including, but not limited to, computers and electronic processing equipment.

(B) Aircraft maintenance equipment, including, but not limited to, engine stands, hydraulic mules, power carts, test equipment, handtools, aircraft start carts, and tugs.

(C) Aircraft components, including, but not limited to, engines, fuel control units, hydraulic pumps, avionics, starts, wheels, and tires.

(D) Any property that is Section 1245 property, as defined in Section 1245(a)(3) of the Internal Revenue Code.

(c) The credit provided under subdivision (a) shall be allowed only for qualified property manufactured in California unless qualified property of a comparable quality and price is not available for timely purchase and delivery from a California manufacturer.

(d) In the case where the credit otherwise allowed under this section exceeds the "net tax" for the taxable year, that portion of the credit which exceeds the "net tax" may be carried over and added to the credit, if any, in succeeding years, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to increase the basis of the property as otherwise required by Section 164(a) of the Internal Revenue Code with respect to sales or use tax paid or incurred in connection with the purchase of qualified property.

(f) (1) The amount of credit otherwise allowed under this section and Section 17053.46, including any credit carryover from prior years, that may reduce the "net tax" for the taxable year shall not exceed the amount of tax that would be imposed on the taxpayer's business income attributed to a LAMBRA determined as if that attributable income represented all the income of the taxpayer subject to tax under this part.

(2) The amount of attributed income described in paragraph (1) shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11, modified for purposes of this section as follows:

(A) Income shall be apportioned to a LAMBRA by multiplying total business income by a fraction, the numerator of which is the property factor, plus the payroll factor, and the denominator of which is two.

(B) "The LAMBRA" shall be substituted for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding taxable years, as if it were an amount exceeding the "net tax" for the taxable year, as provided in subdivision (d).

(g) (1) If the qualified property is disposed of or no longer used by the taxpayer in the LAMBRA, at any time before the close of the second taxable year after the property is placed in service, the

amount of the credit previously claimed, with respect to that property, shall be added to the taxpayer's tax liability in the taxable year of that disposition or nonuse.

(2) At the close of the second taxable year, if the taxpayer has not increased the number of its employees as determined by paragraph (2) of subdivision (b), then the amount of the credit previously claimed shall be added to the taxpayer's net tax for the taxpayer's second taxable year.

(h) If the taxpayer is allowed a credit for qualified property pursuant to this section, only one credit shall be allowed to the taxpayer under this part with respect to that qualified property.

(i) This section shall remain in effect only until December 1, 2003, and as of that date is repealed. However, any unused credit may continue to be carried forward as provided in subdivision (d), until the credit is exhausted.

SEC. 4. Section 17053.46 of the Revenue and Taxation Code is amended to read:

17053.46. (a) For each taxable year beginning on or after January 1, 1995, and before January 1, 2003, there shall be allowed as a credit against the "net tax" (as defined in Section 17039) to a qualified taxpayer for hiring a qualified disadvantaged individual or a qualified displaced employee during the taxable year for employment in the LAMBRA. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of the qualified wages in the first year of employment.

(2) Forty percent of the qualified wages in the second year of employment.

(3) Thirty percent of the qualified wages in the third year of employment.

(4) Twenty percent of the qualified wages in the fourth year of employment.

(5) Ten percent of the qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means:

(A) That portion of wages paid or incurred by the employer during the taxable year to qualified disadvantaged individuals or qualified displaced employees that does not exceed 150 percent of the minimum wage.

(B) The total amount of qualified wages which may be taken into account for purposes of claiming the credit allowed under this section shall not exceed two million dollars ($2,000,000) per taxable year.

(C) Wages received during the 60-month period beginning with the day the individual commences employment with the taxpayer.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1

(commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) "LAMBRA" means a local agency military base recovery area designated in accordance with Section 7114 of the Government Code.

(4) "Qualified disadvantaged individual" means an individual who satisfies all of the following requirements:

(A) (i) At least 90 percent of whose services for the taxpayer during the taxable year are directly related to the conduct of the taxpayer's trade or business located in a LAMBRA.

(ii) Who performs at least 50 percent of his or her services for the taxpayer during the taxable year in the LAMBRA.

(B) Who is hired by the employer after the designation of the area as a LAMBRA in which the individual's services were primarily performed.

(C) Who is any of the following immediately preceding the individual's commencement of employment with the taxpayer:

(i) An individual who has been determined eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.).

(ii) Any voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 as provided pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(iii) Any individual who has been certified eligible by the Employment Development Department under the federal Targeted Jobs Tax Credit Program whether or not this program is in effect.

(5) "Qualified taxpayer" means a taxpayer that conducts a trade or business within a LAMBRA and, for the first two taxable years, has a net increase in jobs (defined as 2,000 paid hours per employee per year) of one or more employees in the LAMBRA.

(A) The net increase in the number of jobs shall be determined by subtracting the total number of full-time employees (defined as 2,000 paid hours per employee per year) the taxpayer employed in this state in the taxable year prior to commencing business operations in the LAMBRA from the total number of full-time employees the taxpayer employed in this state during the second taxable year after commencing business operations in the LAMBRA. For taxpayers who commence doing business in this state with their LAMBRA business operation, the number of employees for the taxable year prior to commencing business operations in the LAMBRA shall be zero. If the taxpayer has a net increase in jobs in the state, the credit shall be allowed only if one or more full-time employees is employed within the LAMBRA.

(B) The total number of employees employed in the LAMBRA shall equal the sum of both of the following:

(i) The total number of hours worked in the LAMBRA for the taxpayer by employees (not to exceed 2,000 hours per employee) who are paid an hourly wage divided by 2,000.

(ii) The total number of months worked in the LAMBRA for the taxpayer by employees who are salaried employees divided by 12.

(C) In the case of a taxpayer who first commences doing business in the LAMBRA during the taxable year, for purposes of clauses (i) and (ii), respectively, of subparagraph (B), the divisors "2,000" and "12" shall be multiplied by a fraction, the numerator of which is the number of months of the taxable year that the taxpayer was doing business in the LAMBRA and the denominator of which is 12.

(6) "Qualified displaced employee" means an individual who satisfies all of the following requirements:

(A) Any civilian or military employee of a base or former base who has been displaced as a result of a federal base closure act.

(B) (i) At least 90 percent of whose services for the taxpayer during the taxable year are directly related to the conduct of the taxpayer's trade or business located in a LAMBRA.

(ii) Who performs at least 50 percent of his or her services for the taxpayer during the taxable year in a LAMBRA.

(C) Who is hired by the employer after the designation of the area in which services were performed as a LAMBRA.

(c) (1) For purposes of this section, both of the following apply:

(A) All employees of trades or businesses that are under common control shall be treated as employed by a single employer.

(B) The credit (if any) allowable by this section with respect to each trade or business shall be determined by reference to its proportionate share of the qualified wages giving rise to the credit.

The regulations prescribed under this paragraph shall be based on principles similar to the principles that apply in the case of controlled groups of corporations as specified in subdivision (e) of Section 23622.

(2) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (d)) for any calendar year ending after that acquisition, the employment relationship between an employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(d) (1) If the employment of any employee, with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the taxable year in which that employment is terminated shall be increased by an amount (determined under those regulations) equal to the credit allowed under subdivision (a)

for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of an employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of an individual who, before the close of the period referred to in paragraph (1), becomes disabled to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of an individual, if it is determined under the applicable employment compensation laws that the termination was due to the misconduct of that individual.

(iv) A termination of employment of an individual due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of an individual, if that individual is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated by reason of a mere change in the form of conducting the trade or business of the taxpayer, if the employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(4) At the close of the second taxable year, if the taxpayer has not increased the number of its employees as determined by paragraph (5) of subdivision (b), then the amount of the credit previously claimed shall be added to the taxpayer's net tax for the taxpayer's second taxable year.

(e) In the case of an estate or trust, both of the following apply:

(1) The qualified wages for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

(2) Any beneficiary to whom any qualified wages have been apportioned under paragraph (1) shall be treated (for purposes of this part) as the employer with respect to those wages.

(f) The credit shall be reduced by the credit allowed under Section 17053.7. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (g) or (h).

(g) In the case where the credit otherwise allowed under this section exceeds the "net tax" for the taxable year, that portion of the credit that exceeds the "net tax" may be carried over and added to the credit, if any, in succeeding years, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(h) (1) The amount of credit otherwise allowed under this section and Section 17053.45, including prior year credit carryovers, that may reduce the "net tax" for the taxable year shall not exceed the amount of tax that would be imposed on the taxpayer's business income attributed to a LAMBRA determined as if that attributed income represented all of the net income of the taxpayer subject to tax under this part.

(2) The amount of attributed income described in paragraph (1) shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11, modified for purposes of this section as follows:

(A) Income shall be apportioned to a LAMBRA by multiplying total business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) "The LAMBRA" shall be substituted for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding taxable years, as if it were an amount exceeding the "net tax" for the taxable year, as provided in subdivision (g).

(i) If the taxpayer is allowed a credit pursuant to this section for qualified wages paid or incurred, only one credit shall be allowed to the taxpayer under this part with respect to any wage consisting in whole or in part of those qualified wages.

(j) This section shall remain in effect only until December 1, 2003, and as of that date is repealed. However, any unused credit may continue to be carried forward as provided in subdivision (g), until the credit is exhausted.

SEC. 5. Section 17053.49 of the Revenue and Taxation Code is amended to read:

17053.49. (a) (1) A qualified taxpayer shall be allowed a credit against the "net tax," as defined in Section 17039, equal to 6 percent of the qualified cost of qualified property that is placed in service in this state.

(2) In the case of any qualified costs paid or incurred on or after January 1, 1994, and prior to the first taxable year of the qualified taxpayer beginning on or after January 1, 1995, the credit provided under paragraph (1) shall be claimed by the qualified taxpayer on the qualified taxpayer's return for the first taxable year beginning on or after January 1, 1995. No credit shall be claimed under this section on a return filed for any taxable year commencing prior to the qualified taxpayer's first taxable year beginning on or after January 1, 1995.

(b) (1) For purposes of this section, "qualified cost" means any cost that satisfies each of the following conditions:

(A) Except as otherwise provided in this subparagraph, is a cost paid or incurred by the qualified taxpayer for the construction, reconstruction, or acquisition of qualified property on or after January 1, 1994, and prior to the date this section ceases to be operative under paragraph (2) of subdivision (i). In the case of any qualified property constructed, reconstructed, or acquired by the qualified taxpayer (or any person related to the qualified taxpayer within the meaning of Section 267 or 707 of the Internal Revenue Code) pursuant to a binding contract in existence on or prior to January 1, 1994, costs paid pursuant to that contract shall be subject to allocation as follows: contract costs shall be allocated to qualified property based on a ratio of costs actually paid prior to January 1, 1994, and total contract costs actually paid. "Cost paid" shall include, without limitation, contractual deposits and option payments. To the extent of costs allocated, whether or not currently deductible or depreciable for tax purposes, to a period prior to January 1, 1994, the cost shall be deemed allocated to property acquired before January 1, 1994, and is thus not a "qualified cost."

(B) Except as provided in paragraph (2) of subdivision (d) and subparagraph (B) of paragraph (3) of subdivision (d), is an amount upon which the qualified taxpayer has paid, directly or indirectly, as a separately stated contract amount or as determined from the records of the qualified taxpayer, sales or use tax under Part 1 (commencing with Section 6001).

(C) Is an amount properly chargeable to the capital account of the qualified taxpayer.

(2) (A) For purposes of this subdivision, any contract entered into on or after January 1, 1994, that is a successor or replacement contract to a contract that was binding prior to January 1, 1994, shall be treated as a binding contract in existence prior to January 1, 1994.

(B) If a successor or replacement contract is entered into on or after January 1, 1994, and the subject of the successor or replacement contract relates both to amounts for the construction, reconstruction, or acquisition of qualified property described in the original binding contract and to costs for the construction, reconstruction, or acquisition of qualified property not described in the original binding contract, then the portion of those amounts described in the successor or replacement contract that were not described in the original binding contract shall not be treated as costs paid or incurred pursuant to a binding contract in existence on or prior to January 1, 1994, under subparagraph (A) of paragraph (1).

(3) (A) For purposes of this section, an option contract in existence prior to January 1, 1994, under which a qualified taxpayer (or any other person related to the qualified taxpayer within the meaning of Section 267 or 707 of the Internal Revenue Code) had an option to acquire qualified property, shall be treated as a binding

contract under the rules in paragraph (2). For purposes of this subparagraph, an option contract shall not include an option under which the option holder will forfeit an amount less than 10 percent of the fixed option price in the event the option is not exercised.

(B) For purposes of this section, a contract shall be treated as binding even if the contract is subject to a condition.

(c) (1) For purposes of this section, "qualified taxpayer" means any taxpayer engaged in those lines of business described in Codes 2011 to 3999, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(2) In the case of any passthrough entity, the determination of whether a taxpayer is a qualified taxpayer under this section shall be made at the entity level and any credit under this section or Section 23649 shall be allowed to the passthrough entity and passed through to the partners or shareholders in accordance with applicable provisions of Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001). For purposes of this paragraph, the term "passthrough entity" means any partnership or S corporation.

(3) The Franchise Tax Board may prescribe regulations to carry out the purposes of this section, including any regulations necessary to prevent the avoidance of the effect of this section through splitups, shell corporations, partnerships, tiered ownership structures, sale-leaseback transactions, or otherwise.

(d) For purposes of this section, "qualified property" means property that is described as either of the following:

(1) Tangible personal property that is defined in Section 1245(a) of the Internal Revenue Code for use by a qualified taxpayer in those lines of business described in Codes 2011 to 3999, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, that is primarily used for any of the following:

(A) For the manufacturing, processing, refining, fabricating, or recycling of property, beginning at the point at which any raw materials are received by the qualified taxpayer and introduced into the process and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling has altered tangible personal property to its completed form, including packaging, if required.

(B) In research and development.

(C) To maintain, repair, measure, or test any property described in this paragraph.

(D) For pollution control that meets or exceeds standards established by the state or by any local or regional governmental agency within the state.

(E) For recycling.

(2) The value of any capitalized labor costs that are directly allocable to the construction or modification of property described in paragraph (1).

(3) In the case of any qualified taxpayer engaged in manufacturing activities described in SIC Code 357 or 367, those activities related to biotechnology described in SIC Code 8731, those activities related to biopharmaceutical establishments only that are described in SIC Codes 2833 to 2836, inclusive, those activities related to space vehicles and parts described in SIC Codes 3761 to 3769, inclusive, those activities related to space satellites and communications satellites and equipment described in SIC Codes 3663 and 3812 (but only with respect to "qualified property" that is placed in service on or after January 1, 1996), or those activities related to semiconductor equipment manufacturing described in SIC Code 3559 (but only with respect to "qualified property" that is placed in service on or after January 1, 1997), "qualified property" also includes the following:

(A) Special purpose buildings and foundations that are constructed or modified for use by the qualified taxpayer primarily in a manufacturing, processing, refining, or fabricating process, or as a research or storage facility primarily used in connection with a manufacturing process.

(B) The value of any capitalized labor costs that are directly allocable to the construction or modification of special purpose buildings and foundations that are used primarily in the manufacturing, processing, refining, or fabricating process, or as a research or storage facility primarily used in connection with a manufacturing process.

(C) (i) For purposes of this paragraph, "special purpose building and foundation" means only a building and the foundation immediately underlying the building that is specifically designed and constructed or reconstructed for the installation, operation, and use of specific machinery and equipment with a special purpose, which machinery and equipment, after installation, will become affixed to or a fixture of the real property, and the construction or reconstruction of which is specifically designed and used exclusively for the specified purposes as set forth in subparagraph (A) ("qualified purpose").

(ii) A building is specifically designed and constructed or modified for a qualified purpose if it is not economical to design and construct the building for the intended purpose and then use the structure for a different purpose.

(iii) For purposes of clause (i) and clause (vi), a building is used exclusively for a qualified purpose only if its use does not include a use for which it was not specifically designed and constructed or modified. Incidental use of a building for nonqualified purposes does not preclude the building from being a special purpose building. "Incidental use" means a use which is both related and subordinate

to the qualified purpose. It will be conclusively presumed that a use is not subordinate if more than one-third of the total usable volume of the building is devoted to a use which is not a qualified purpose.

(iv) In the event an entire building does not qualify as a special purpose building, a taxpayer may establish that a portion of a building, and the foundation immediately underlying the portion, qualifies for treatment as a special purpose building and foundation if the portion satisfies all of the definitional provisions in this subparagraph.

(v) To the extent that a building is not a special purpose building as defined above, but a portion of the building qualifies for treatment as a special purpose building, then all equipment which exclusively supports the qualified purpose occurring within that portion and which would qualify as Internal Revenue Code Section 1245 property if it were not a fixture or affixed to the building shall be treated as a cost of the portion of the building which qualifies for treatment as a special purpose building.

(vi) Buildings and foundations which do not meet the definition of a special purpose building and foundation set forth above include, but are not limited to: buildings designed and constructed or reconstructed principally to function as a general purpose manufacturing, industrial, or commercial building; research facilities that are used primarily prior to or after, or prior to and after, the manufacturing process; or storage facilities that are used primarily prior to or after, or prior to and after, completion of the manufacturing process. A research facility shall not be considered to be used primarily prior to or after, or prior to and after, the manufacturing process if its purpose and use relate exclusively to the development and regulatory approval of the manufacturing process for specific biopharmaceutical products. A research facility which is used primarily in connection with the discovery of an organism from which a biopharmaceutical product or process is developed does not meet the requirements of the preceding sentence.

(4) Subject to the provisions in subparagraph (B) of paragraph (1) of subdivision (b), qualified property also includes computer software that is primarily used for those purposes set forth in paragraph (1) of this subdivision.

(5) Qualified property does not include any of the following:

(A) Furniture.

(B) Facilities used for warehousing purposes after completion of the manufacturing process.

(C) Inventory.

(D) Equipment used in the extraction process.

(E) Equipment used to store finished products that have completed the manufacturing process.

(F) Any tangible personal property that is used in administration, general management, or marketing.

(G) Any vehicle for which a credit is claimed pursuant to Section 17052.11 or 23603.

(e) For purposes of this section:

(1) "Biopharmaceutical activities" means those activities which use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide pharmaceutical products for human or animal therapeutics and diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as opposed to pharmaceutical activities which make use of chemical compounds to produce commercial products.

(2) "Fabricating" means to make, build, create, produce, or assemble components or property to work in a new or different manner.

(3) "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.

(4) "Other biotechnology activities" means activities consisting of the application of recombinant DNA technology to produce commercial products, as well as activities regarding pharmaceutical delivery systems designed to provide a measure of control over the rate, duration, and site of pharmaceutical delivery.

(5) "Primarily" means tangible personal property used 50 percent or more of the time in an activity described in subdivision (d).

(6) "Process" means the period beginning at the point at which any raw materials are received by the qualified taxpayer and introduced into the manufacturing, processing, refining, fabricating, or recycling activity of the qualified taxpayer and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling activity of the qualified taxpayer has altered tangible personal property to its completed form, including packaging, if required. Raw materials shall be considered to have been introduced into the process when the raw materials are stored on the same premises where the qualified taxpayer's manufacturing, processing, refining, or recycling activity is conducted. Raw materials that are stored on premises other than where the qualified taxpayer's manufacturing, processing, refining, fabricating, or recycling activity is conducted, shall not be considered to have been introduced into the manufacturing, processing, refining, fabricating, or recycling process.

(7) "Processing" means the physical application of the materials and labor necessary to modify or change the characteristics of property.

(8) "Refining" means the process of converting a natural resource to an intermediate or finished product.

(9) "Research and development" means those activities that are described in Section 174 of the Internal Revenue Code or in any regulations thereunder.

(10) "Small business" means a qualified 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).

(D) For taxable years beginning on or after January 1, 1997, is engaged in biopharmaceutical activities or other biotechnology activities that are described in Codes 2833 to 2836, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, and has not received regulatory approval for any product from the United States Food and Drug Administration.

(f) The credit allowed under subdivision (a) shall apply to qualified property that is acquired by or subject to lease by a qualified taxpayer, subject to the following special rules:

(1) A lessor of qualified property, irrespective of whether the lessor is a qualified taxpayer, shall not be allowed the credit provided under subdivision (a) with respect to any qualified property leased to another qualified taxpayer.

(2) For purposes of paragraphs (2) and (3) of subdivision (b), "binding contract" shall include any lease agreement with respect to the qualified property.

(3) (A) For purposes of determining the qualified cost paid or incurred by a lessee in any leasing transaction that is not treated as a sale under Part 1 (commencing with Section 6001), the following rules shall apply:

(i) Except as provided by subparagraph (C) of this paragraph, subparagraphs (A) and (C) of paragraph (1) of subdivision (b) shall not apply.

(ii) Except as provided in subparagraph (B) and clause (iii), the "qualified cost" upon which the lessee shall compute the credit provided under this section shall be equal to the original cost to the lessor (within the meaning of Section 18031) of the qualified property that is the subject of the lease.

(iii) Except as provided in clause (iv), the requirement of subparagraph (B) of paragraph (1) of subdivision (b) shall be treated as satisfied only if the lessor has made a timely election under either Section 6094.1 or subdivision (d) of Section 6244 and has paid sales tax reimbursement or use tax measured by the purchase price of the qualified property (within the meaning of paragraph (5) of subdivision (g) of Section 6006). For purposes of this subdivision and

clause (iv), the amount of original cost to the lessor which may be taken into account under clause (ii) shall not exceed the purchase price upon which sales tax reimbursement or use tax has been paid under the preceding sentence or under clause (iv).

(iv) With respect to leases entered into between January 1, 1994, and the effective date of this clause, the lessor may elect to pay use tax measured by the purchase price of the property by reporting and paying the tax with the return of the lessor for the fourth calendar quarter of 1994. In computing the use tax under the preceding sentence, a credit shall be allowed under Part 1 (commencing with Section 6001) for all sales or use tax previously paid on the lease.

(B) For purposes of applying subparagraph (A) only, the following special rules shall apply:

(i) The original cost to the lessor of the qualified property shall be reduced by the amount of any original cost of that property that was taken into account by any predecessor lessee in computing the credit allowable under this section.

(ii) Clause (i) shall not apply in any case where the predecessor lessee was required to recapture the credit provided under this section pursuant to the provisions of subdivision (g).

(iii) For purposes of this section only, in any case where a successor lessor has acquired qualified property from a predecessor lessor in a transaction not treated as a sale under Part 1 (commencing with Section 6001), the original cost to the successor lessor of the qualified property shall be reduced by the amount of the original cost of the qualified property that was taken into account by any lessee of the predecessor lessor in computing the credit allowable under this section.

(C) In determining the original cost of any qualified property under this paragraph, only amounts paid or incurred by the lessor on or after January 1, 1994, and prior to the date this section ceases to be operative under paragraph (2) of subdivision (i), shall be taken into account. In the case of any qualified property constructed, reconstructed, or acquired by a lessor pursuant to a binding contract in existence on or prior to January 1, 1994, the allocation rule specified in subparagraph (A) of paragraph (1) of subdivision (b) shall apply in determining the original cost to the lessor of qualified property.

(D) Notwithstanding subparagraph (A), in the case of any leasing transaction for which the lessee is allowed the credit under this section and thereafter the lessee (or any party related to the lessee within the meaning of Section 267 or 318 of the Internal Revenue Code) acquires the qualified property from the lessor (or any successor lessor) within one year from the date the qualified property is first used by the lessee under the terms of the lease, the lessee's (or related party's) acquisition of the qualified property from the lessor (or successor lessor) shall be treated as a disposition by the lessee of the qualified property that was subject to the lease under subdivision (g).

(4) For purposes of determining the qualified cost paid or incurred by a lessee in any leasing transaction that is treated as a sale under Part 1 (commencing with Section 6001), the following rules shall apply:

(A) Subparagraph (A) of paragraph (1) of subdivision (b) shall be applied by substituting the term "purchase" for the term "construction, reconstruction, or acquisition."

(B) Subparagraph (C) of paragraph (1) of subdivision (b) shall apply.

(C) The requirement of subparagraph (B) of paragraph (1) of subdivision (b) shall be treated as satisfied at the time that either the lessor or the qualified taxpayer pays sales or use tax under Part 1 (commencing with Section 6001).

(5) (A) In the case of any leasing transaction described in paragraph (3), the lessor shall provide a statement to the lessee specifying the amount of the lessor's original cost of the qualified property and the amount of that cost upon which a sales or use tax was paid within 45 days after the close of the lessee's taxable year in which the credit is allowable to the lessee under this section.

(B) The statement required under subparagraph (A) shall be made available to the Franchise Tax Board upon request.

(g) No credit shall be allowed if the qualified property is removed from the state, is disposed of to an unrelated party, or is used for any purpose not qualifying for the credit provided in this section in the same taxable year in which the qualified property is first placed in service in this state. If any qualified property for which a credit is allowed pursuant to this section is thereafter removed from this state, disposed of to an unrelated party, or used for any purpose not qualifying for the credit provided in this section within one year from the date the qualified property is first placed in service in this state, the amount of the credit allowed by this section for that qualified property shall be recaptured by adding that credit amount to the net tax of the qualified taxpayer for the taxable year in which the qualified property is disposed of, removed, or put to an ineligible use.

(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 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.

(i) (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 (h), 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.

(j) The amendments made by the act adding this subdivision shall be operative for taxable years beginning on or after January 1, 1997, except as provided in paragraph (3) of subdivision (d).

SEC. 6. Section 17053.66 of the Revenue and Taxation Code is amended to read:

17053.66. (a) For each taxable year beginning on or after January 1, 1995, and before January 1, 2000, there shall be allowed, as determined by the Department of Fish and Game, a credit against the "net tax," as defined in Section 17039. The credit amount shall be equal to the lesser of 10 percent of the qualified costs paid or incurred by the taxpayer for salmon and steelhead trout habitat restoration and improvement projects or an amount determined in subparagraph (B) of paragraph (2) of subdivision (f). The credit allowed by this section shall be claimed on the return for the taxable year in which the expense for the habitat restoration or improvement project was paid or incurred.

(b) The taxpayer shall be eligible to claim the credit only after application to and certification by the Department of Fish and Game that all of the following conditions are met:

(1) The salmon or steelhead trout habitat restoration or improvement project meets the objectives of the Salmon, Steelhead Trout, and Anadromous Fisheries Program Act (Chapter 8 (commencing with Section 6900) of Part 1 of Division 6 of the Fish and Game Code) and would aid in increasing the natural production of salmon and steelhead trout through improvement of stream and streambank conditions, improvement of land use practices, or changes in streamflow operations.

(2) The work to be undertaken is not otherwise required to be carried out pursuant to the Z'berg-Nejedly Forest Practice Act of 1973 (Chapter 8 (commencing with Section 4511) of Part 2 of Division 4 of the Public Resources Code), for mitigation of negative impacts to the environment caused by timber operations or required for mitigation of negative impacts on fish and wildlife habitat caused by a project pursuant to an approved environmental impact report or mitigated negative declaration required pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(c) (1) Qualified costs are those costs paid or incurred by the taxpayer or partnership which are directly related to labor and materials which aid in increasing the natural production of salmon

and steelhead trout through improvement of stream and streambank conditions, improvement of land use practices, or changes in streamflow operations.

(2) Qualified costs do not include costs paid or incurred with respect to any of the following:

(A) Construction of office, storage, garage, or maintenance buildings.

(B) Drilling wells or installation of pumping equipment.

(C) Construction of permanent hatchery facilities, including raceways, water systems, or bird enclosures.

(D) Construction of permanent surface roadways or bridges.

(E) Any project requiring engineered design or certification by a registered engineer.

(3) Qualified costs shall be no greater than prevailing costs for similar work completed in the area where the project is proposed, and the project design and implementation shall follow Department of Fish and Game guidelines.

(d) For purposes of computing the credit provided by this section, the cost of any salmon or steelhead trout habitat restoration or improvement project eligible for the credit shall be reduced by the amount of any grant or cost-share payment provided by a public entity for that project. The Department of Fish and Game shall certify the amount of funding, if any, provided by the Department of Fish and Game for the project.

(e) The taxpayer shall do all of the following:

(1) (A) Submit an application for the restoration tax credit with a description of the proposed project in a format acceptable to the Department of Fish and Game.

(B) The application for the restoration tax credit shall include all information that is required by the Department of Fish and Game, pursuant to subdivision (b), as well as, but not limited to, all of the following:

(i) A project description of the habitat restoration or improvement work to be accomplished, including the location of the project.

(ii) If other than the project applicant, the name of the owner of the land where the project is to be carried out.

(iii) The estimated qualified cost to accomplish the project, as well as the project's overall estimated cost.

(iv) A statement that a reasonable attempt will be made to hire unemployed persons previously employed in the commercial fishing or forest products industries for implementation of the project.

(v) The tax identification number of each taxpayer allowed the credit.

(2) Obtain from the Department of Fish and Game certification that the project is approved, and the amount of credit allocation authorized, which shall not exceed the maximum amount of credit allocation set forth in subdivision (k).

(3) Notify the Department of Fish and Game in a form and manner specified by the department that the habitat restoration or improvement work was actually completed and the amount of qualified costs that were paid.

(4) Provide access, subject to prior notification by the Department of Fish and Game staff and permission by the taxpayer, to proposed project sites by the Department of Fish and Game staff for preproject and postproject evaluation, for project monitoring during all phases of implementation, and for verification that projects have been completed in accordance with department guidelines and recommendations. The Department of Fish and Game shall not include a project on its list of approved projects eligible for the tax credit that is submitted to the Franchise Tax Board unless these conditions are met.

(5) Retain a copy of and make the certification referred to in paragraph (3) of subdivision (f) available to the Franchise Tax Board upon demand.

(6) Calculate the credit amount, equal to the lesser of 10 percent of the taxpayer's actual qualified costs or the amount of credit allocation authorized to the taxpayer, as determined by the Department of Fish and Game.

(7) A partnership shall disclose in its partnership return for the taxable year all of the following:

(A) The name of each partner who received a distributive share of the credit.

(B) Each partner's social security number or identification number.

(C) Each partner's distributive share of the credit.

(f) The Department of Fish and Game shall do all of the following:

(1) Accept and review applications to determine if projects meet the conditions specified in subdivision (b).

(2) After all applications have been received for a calendar year, determine if 10 percent of the estimated costs for all approved projects exceeds the annual credit allocation. If the annual amount of credit allocation is exceeded, the amount of each taxpayer's credit allocation shall be calculated as follows:

(A) Divide the annual amount of credit allocation set forth in subdivision (j) by the total estimated qualified costs for all approved projects.

(B) Multiply each approved project's estimated qualified cost by the quotient of the calculation in subparagraph (A).

(C) If the annual amount of credit allocation is not exceeded, the amount of each credit allocation shall be 10 percent of the estimated qualified costs.

(3) Issue certificates to each taxpayer with an approved project that specifies the amount of credit allocated to the project.

(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 Department of Fish and Game) of the taxpayers who were issued the certification, their respective tax identification numbers, and the allowable amount of the credit allocated to each taxpayer.

(g) The Department of Fish and Game shall have the authority to establish annual timeframes for the receipt of applications.

(h) 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.

(i) 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.

(j) For purposes of this section, the annual amount of credit allocation means the aggregate amount of tax credits which may be granted pursuant to this section and Section 23666 shall not exceed five hundred thousand dollars ($500,000) per year. The Department of Fish and Game shall not authorize any credit which would cause the total amount of credits authorized with respect to any calendar year under this section and Section 23666 to exceed five hundred thousand dollars ($500,000).

(k) The maximum credit amount which the Department of Fish and Game may authorize with respect to any taxable year to any taxpayer is fifty thousand dollars ($50,000).

(*l*) In the case of a partnership, the credit limitation specified in subdivision (k) shall apply with respect to the partnership and with respect to each partner.

(m) This section shall remain in effect only until December 1, 2000, and as of that date is repealed.

SEC. 7. Section 17268 of the Revenue and Taxation Code is amended to read:

17268. (a) For each taxable year beginning on or after January 1, 1995, and before January 1, 2003, a taxpayer may elect to treat the cost of any Section 17268 property as an expense that is not chargeable to the capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which Section 17268 property is placed in service.

(b) In the case of a husband or wife filing separate returns for a taxable year in which a spouse is entitled to the deduction under subdivision (a), the applicable amount shall be equal to 50 percent of the amount otherwise determined under subdivision (a).

(c) (1) An election under this section for any taxable year shall meet both of the following requirements:

(A) Specify the items of Section 17268 property to which the election applies and the portion of the cost of each of those items that 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) 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 17268 property" means any recovery property that is Section 1245 property (as defined in Section 1245(a)(3) of the Internal Revenue Code) and that the taxpayer acquires by purchase for exclusive use in a trade or business conducted within a LAMBRA.

(2) For purposes of paragraph (1), "purchase" means any acquisition of property, but only if both of the following apply:

(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 707(b) of the Internal Revenue Code (but, in applying Section 267 (b) and Section 267 (c) of the Internal Revenue Code for purposes of this section, Section 267(c)(4) of the Internal Revenue Code shall be treated as providing that the family of an individual shall include only his or her spouse, ancestors, and lineal descendants).

(B) The basis of the property in the hands of the person acquiring it is not determined by either of the following:

(i) In whole or in part by reference to the adjusted basis of the property in the hands of the person from whom acquired.

(ii) Under Section 1014 of the Internal Revenue Code, relating to basis of property acquired from a decedent.

(3) For purposes of this section, the cost of property does not include that portion of the basis of the property that 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 provisions of Section 179(d) of the Internal Revenue Code.

(6) In the case of a partnership, the dollar limitation in subdivision (f) shall apply at the partnership level and at the partner level.

(7) This section shall not apply to any property described in Section 168(f) of the Internal Revenue Code, relating to property to which Section 168 of the Internal Revenue Code does not apply.

(e) For purposes of this section:

(1) "LAMBRA" means a local agency military base recovery area designated in accordance with the provisions of Section 7114 of the Government Code.

(2) "Taxpayer" means a taxpayer that conducts a trade or business within a LAMBRA and, for the first two taxable years, has a net increase in jobs (defined as 2,000 paid hours per employee per year) of one or more employees in the LAMBRA.

(A) The net increase in the number of jobs shall be determined by subtracting the total number of full-time employees (defined as 2,000 paid hours per employee per year) the taxpayer employed in this state in the taxable year prior to commencing business operations in the LAMBRA from the total number of full-time employees the taxpayer employed in this state during the second taxable year after commencing business operations in the LAMBRA. For taxpayers who commence doing business in this state with their LAMBRA business operation, the number of employees for the taxable year prior to commencing business operations in the LAMBRA shall be zero. If the taxpayer has a net increase in jobs in the state, the credit shall be allowed only if one or more full-time employees is employed within the LAMBRA.

(B) The total number of employees employed in the LAMBRA shall equal the sum of both of the following:

(i) The total number of hours worked in the LAMBRA for the taxpayer by employees (not to exceed 2,000 hours per employee) who are paid an hourly wage divided by 2,000.

(ii) The total number of months worked in the LAMBRA for the taxpayer by employees who are salaried employees divided by 12.

(C) In the case of a taxpayer who first commences doing business in the LAMBRA during the taxable year, for purposes of clauses (i) and (ii), respectively, of subparagraph (B) the divisors "2,000" and "12" shall be multiplied by a fraction, the numerator of which is the number of months of the taxable year that the taxpayer was doing business in the LAMBRA and the denominator of which is 12.

(f) The deduction allowable under subdivision (a) for any taxable year shall not exceed the following applicable amount for the taxable year of the designation of a LAMBRA and each taxable year thereafter:

Taxable year of designation	$ 5,000
1st taxable year thereafter	5,000
2nd taxable year thereafter	7,500
3rd taxable year thereafter	7,500
Each taxable year thereafter	10,000

(g) This section shall apply only to property that is used exclusively in a trade or business conducted within a LAMBRA.

(h) (1) Any amounts deducted under subdivision (a) with respect to property that ceases to be used in the trade or business within a LAMBRA at any time before the close of the second taxable year after the property was placed in service shall be included in income for that year.

(2) At the close of the second taxable year, if the taxpayer has not increased the number of its employees as determined by paragraph (2) of subdivision (e), then the amount of the deduction previously

claimed shall be added to the taxpayer's taxable income for the taxpayer's second taxable year.

(i) 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.

(j) This section shall remain in effect only until December 1, 2003, and as of that date is repealed.

SEC. 8. 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) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates a new business during that taxable year, each of the following shall apply to each loss incurred during the first three taxable years of operating the new business:

(A) If the net operating loss is equal to or less than the net loss from the new business, 100 percent of the net operating loss shall be carried forward as provided in paragraph (2) of subdivision (d).

(B) If the net operating loss is greater than the net loss from the new business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the new business, 100 percent of that amount shall be carried forward as provided in paragraph (2) of subdivision (d).

(ii) With respect to the portion of the net operating loss which exceeds the net loss from the new business, 50 percent of that amount shall be a net operating loss carryover to each of the five taxable years following the taxable year of the loss.

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(3) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates an eligible small business during that taxable year, each of the following shall apply:

(A) If the net operating loss is equal to or less than the net loss from the eligible small business, 100 percent of the net operating loss shall be carried forward to the taxable years specified in paragraph (1) of subdivision (d).

(B) If the net operating loss is greater than the net loss from the eligible small business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the eligible small business, 100 percent of that amount shall be carried forward to each of the five taxable years following the taxable year of the loss.

(ii) With respect to the portion of the net operating loss that exceeds the net loss from the eligible small business, 50 percent of that amount shall be a net operating loss carryover to each of the five taxable years following the taxable year of the loss.

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(4) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates a business that qualifies as both a new business and an eligible small business under this section, that business shall be treated as a new business for the first three taxable years of the new business.

(5) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates more than one business, and more than one of those businesses qualifies as either a new business or an eligible small business under this section, paragraph (2) shall be applied first, except that if there is any remaining portion of the net operating loss after application of clause (i) of subparagraph (B) of that paragraph, paragraph (3) shall be applied to the remaining portion of the net operating loss as though that remaining portion of the net operating loss constituted the entire net operating loss.

(6) For purposes of this section, the term "net loss" means the amount of net loss after application of Sections 465 and 469 of the Internal Revenue Code.

(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 small business" means any trade or business that has gross receipts, less returns and allowances, of less than one million dollars ($1,000,000) during the taxable year.

(2) Except as provided in subdivision (f), "new business" means any trade or business activity that is first commenced in this state on or after January 1, 1994.

(3) "Title 11 or similar case" shall have the same meaning as in Section 368(a)(3) of the Internal Revenue Code.

(4) In the case of any trade or business activity conducted by a partnership or S corporation, paragraphs (1) and (2) shall be applied to the partnership or S corporation.

(f) For purposes of this section, in determining whether a trade or business activity qualifies as a new business under paragraph (2) of subdivision (e), the following rules shall apply:

(1) In any case where a taxpayer purchases or otherwise acquires all or any portion of the assets of an existing trade or business (irrespective of the form of entity) that is doing business in this state (within the meaning of Section 23101), the trade or business thereafter conducted by the taxpayer (or any related person) shall not be treated as a new business if the aggregate fair market value of the acquired assets (including real, personal, tangible, and intangible property) used by the taxpayer (or any related person) in the conduct of its trade or business exceeds 20 percent of the aggregate fair market value of the total assets of the trade or business being conducted by the taxpayer (or any related person). For purposes of this paragraph only, the following rules shall apply:

(A) The determination of the relative fair market values of the acquired assets and the total assets shall be made as of the last day of the first taxable year in which the taxpayer (or any related person) first uses any of the acquired trade or business assets in its business activity.

(B) Any acquired assets that constituted property described in Section 1221(1) of the Internal Revenue Code in the hands of the transferor shall not be treated as assets acquired from an existing trade or business, unless those assets also constitute property described in Section 1221(1) of the Internal Revenue Code in the hands of the acquiring taxpayer (or related person).

(2) In any case where a taxpayer (or any related person) is engaged in one or more trade or business activities in this state, or has been engaged in one or more trade or business activities in this state within the preceding 36 months ("prior trade or business activity"), and thereafter commences an additional trade or business activity in this state, the additional trade or business activity shall only be treated as a new business if the additional trade or business activity is classified under a different division of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, than are any of the taxpayer's (or any related person's) current or prior trade or business activities.

(3) In any case where a taxpayer, including all related persons, is engaged in trade or business activities wholly outside of this state and the taxpayer first commences doing business in this state (within the meaning of Section 23101) after December 31, 1993 (other than by purchase or other acquisition described in paragraph (1)), the trade or business activity shall be treated as a new business under paragraph (2) of subdivision (e).

(4) In any case where the legal form under which a trade or business activity is being conducted is changed, the change in form shall be disregarded and the determination of whether the trade or business activity is a new business shall be made by treating the taxpayer as having purchased or otherwise acquired all or any portion of the assets of an existing trade or business under the rules of paragraph (1) of this subdivision.

(5) "Related person" shall mean any person that is related to either the taxpayer under either Section 267 or 318 of the Internal Revenue Code.

(6) "Acquire" shall include any gift, inheritance, transfer incident to divorce, or any other transfer, whether or not for consideration.

(7) (A) For taxable years beginning on or after January 1, 1997, the term "new business" shall include any taxpayer that is engaged in biopharmaceutical activities or other biotechnology activities that are described in Codes 2833 to 2836, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, and as further

amended, and that has not received regulatory approval for any product from the United States Food and Drug Administration.

(B) For purposes of this paragraph:

(i) "Biopharmaceutical activities" means those activities which use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide pharmaceutical products for human or animal therapeutics and diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as opposed to pharmaceutical activities which make use of chemical compounds to produce commercial products.

(ii) "Other biotechnology activities" means activities consisting of the application of recombinant DNA technology to produce commercial products, as well as activities regarding pharmaceutical delivery systems designed to provide a measure of control over the rate, duration, and site of pharmaceutical delivery.

(g) 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.

(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.

(i) The Franchise Tax Board may prescribe appropriate regulations to carry out the purposes of this section, including any regulations necessary to prevent the avoidance of the purposes of this section through splitups, shell corporations, partnerships, tiered ownership structures, or otherwise.

(j) The Franchise Tax Board may reclassify any net operating loss carryover determined under either paragraph (2) or (3) of subdivision (b) as a net operating loss carryover under paragraph (1) of subdivision (b) upon a showing that the reclassification is necessary to prevent evasion of the purposes of this section.

(k) The amendments made by the act adding this subdivision shall be operative for taxable years beginning on or after January 1, 1997.

SEC. 9. Section 19011 of the Revenue and Taxation Code is amended to read:

19011. (a) All payments required under this part, regardless of the income (or taxable) 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 are met:

(1) With respect to any corporation, any installment payment of estimated tax 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 exceeds twenty thousand

dollars ($20,000) in any income year beginning on or after January 1, 1995.

(2) With respect to any corporation, the total tax liability exceeds two hundred thousand dollars ($200,000) in any income year beginning on or after January 1, 1991, or exceeds 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 made pursuant to Section 19051.

(3) A taxpayer submits a request to the Franchise Tax Board and is granted permission to make electronic funds transfers.

(b) 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) of subdivision (a) were not met for the preceding income (or taxable) year. The election shall be made in a form and manner prescribed by the Franchise Tax Board.

(c) 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.

(d) 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.

(e) 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 (f), 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.

(f) 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, automated clearinghouse credit, a Federal Reserve Wire Transfer (Fedwire), or by 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 state's bank account.

(7) In determining whether a payment or total tax liability exceeds the amounts established in subdivision (a), the income of 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 income of a single taxpayer for purposes of determining the payment or total tax liability of a single taxpayer.

SEC. 10. Section 19551 of the Revenue and Taxation Code 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 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. 11. Chapter 1.5 (commencing with Section 23081) of Part 11 of Division 2 of the Revenue and Taxation Code is repealed.

SEC. 12. Chapter 1.6 (commencing with Section 23091) of Part 11 of Division 2 of the Revenue and Taxation Code is repealed.

SEC. 13. Chapter 1.7 (commencing with Section 23097) of Part 11 of Division 2 of the Revenue and Taxation Code is repealed.

SEC. 14. Section 23666 of the Revenue and Taxation Code is amended to read:

23666. (a) For each income year beginning on or after January 1, 1995, and before January 1, 2000, there shall be allowed, as determined by the Department of Fish and Game, a credit against the "tax," as defined in Section 23036. The credit amount shall be equal to the lesser of 10 percent of the qualified costs paid or incurred by the taxpayer for salmon and steelhead trout habitat restoration and improvement projects or an amount determined in

subparagraph (B) of paragraph (2) of subdivision (f). The credit allowed by this section shall be claimed on the return for the income year in which the expense for the habitat restoration or improvement project was paid or incurred.

(b) A taxpayer shall be eligible to claim the credit only after application to and certification by the Department of Fish and Game that all of the following conditions are met:

(1) The salmon or steelhead trout habitat restoration or improvement project meets the objectives of the Salmon, Steelhead Trout, and Anadromous Fisheries Program Act (Chapter 8 (commencing with Section 6900) of Part 1 of Division 6 of the Fish and Game Code) and would aid in increasing the natural production of salmon and steelhead trout through improvement of stream and streambank conditions, improvement of land use practices, or changes in streamflow operations.

(2) The work to be undertaken is not otherwise required to be carried out pursuant to the Z'berg-Nejedly Forest Practice Act of 1973 (Chapter 8 (commencing with Section 4511) of Part 2 of Division 4 of the Public Resources Code), for mitigation of negative impacts to the environment caused by timber operations or required for mitigation of negative impacts on fish and wildlife habitat caused by a project pursuant to an approved environmental impact report or mitigated negative declaration required pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(c) (1) Qualified costs are those costs paid or incurred by the taxpayer which are directly related to labor and materials which aid in increasing the natural production of salmon and steelhead trout through improvement of stream and streambank conditions, improvement of land use practices, or changes in streamflow operations.

(2) Qualified costs do not include costs paid or incurred with respect to any of the following:

(A) Construction of office, storage, garage, or maintenance buildings.

(B) Drilling wells or installation of pumping equipment.

(C) Construction of permanent hatchery facilities, including raceways, water systems, or bird enclosures.

(D) Construction of permanent surface roadways or bridges.

(E) Any project requiring engineered design or certification by a registered engineer.

(3) Qualified costs shall be no greater than prevailing costs for similar work completed in the area where the project is proposed, and the project design and implementation shall follow the Department of Fish and Game guidelines.

(d) For purposes of computing the credit provided by this section, the cost of any salmon or steelhead trout habitat restoration or improvement project eligible for the credit shall be reduced by the

amount of any grant or cost-share payment provided by a public entity for that project. The Department of Fish and Game shall certify the amount of funding, if any, provided by the Department of Fish and Game for the project.

(e) The taxpayer shall do all of the following:

(1) (A) Submit an application for the restoration tax credit with a description of the proposed project in a format acceptable to the Department of Fish and Game.

(B) The application for the restoration tax credit shall include all information that is required by the Department of Fish and Game, pursuant to subdivision (b), as well as, but not limited to, all of the following:

(i) A project description of the habitat restoration or improvement work to be accomplished, including the location of the project.

(ii) If other than the project applicant, the name of the owner of the land where the project is to be carried out.

(iii) The estimated qualified cost to accomplish the project, as well as the project's overall estimated cost.

(iv) A statement that a reasonable attempt will be made to hire unemployed persons previously employed in the commercial fishing or forest products industries for implementation of the project.

The tax identification number of each taxpayer allowed the credit.

(2) Obtain from the Department of Fish and Game certification that the project is approved, and the amount of credit allocation authorized, which shall not exceed the maximum amount of credit allocation set forth in subdivision (k).

(3) Notify the Department of Fish and Game in a form and manner specified by the department that the habitat restoration or improvement work was actually completed and the amount of qualified costs that were paid.

(4) Provide access, subject to prior notification by the Department of Fish and Game staff and permission by the taxpayer, to proposed project sites by the Department of Fish and Game staff for preproject and postproject evaluation, for project monitoring during all phases of implementation, and for verification that projects have been completed in accordance with department guidelines and recommendations. The Department of Fish and Game shall not include a project on its list of approved projects eligible for the tax credit that is submitted to the Franchise Tax Board unless these conditions are met.

(5) Retain a copy of and make the certification referred to in paragraph (3) of subdivision (f) available to the Franchise Tax Board upon demand.

(6) Calculate the credit amount, equal to the lesser of 10 percent of the taxpayer's actual qualified costs or the amount of credit allocation authorized to the taxpayer, as determined by the Department of Fish and Game.

(f) The Department of Fish and Game shall do all of the following:

(1) Accept and review applications to determine if projects meet the conditions specified in subdivision (b).

(2) After all applications have been received for a calendar year, determine if 10 percent of the estimated costs for all approved projects exceeds the annual credit allocation. If the annual amount of credit allocation is exceeded, the amount of each taxpayer's credit allocation shall be calculated as follows:

(A) Divide the annual amount of credit allocation set forth in subdivision (j) by the total estimated qualified costs for all approved projects.

(B) Multiply each approved project's estimated qualified cost by the quotient of the calculation in subparagraph (A).

(C) If the annual amount of credit allocation is not exceeded, the amount of each credit allocation shall be 10 percent of the estimated qualified costs.

(3) Issue certificates to each taxpayer with an approved project that specifies the amount of credit allocated to the project.

(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 Department of Fish and Game) of the taxpayers who were issued the certification, their respective tax identification numbers, and the allowable amount of the credit allocated to each taxpayer.

(g) The Department of Fish and Game shall have the authority to establish annual timeframes for the receipt of applications.

(h) The taxpayers' identification numbers obtained through the tax credit application and certification process shall be used exclusively for state tax administrative purposes.

(i) 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.

(j) For purposes of this section, the annual amount of credit allocation means the aggregate amount of tax credits which may be granted pursuant to this section and Section 17053.66 shall not exceed five hundred thousand dollars ($500,000) per year. The Department of Fish and Game shall not authorize any credit which would cause the total amount of credits authorized with respect to any calendar year under this section and Section 17053.66 to exceed five hundred thousand dollars ($500,000).

(k) The maximum credit amount which the Department of Fish and Game may authorize with respect to any income year to any taxpayer is fifty thousand dollars ($50,000).

(*l*) In the case of a partnership, the credit limitation specified in subdivision (k) shall apply with respect to the partnership and with respect to each partner.

(m) This section shall remain in effect only until December 1, 2000, and as of that date is repealed.

CHAPTER 50

An act to amend Section 374.3 of the Penal Code, relating to unlawful dumping.

[Approved by Governor May 28, 1998. Filed with Secretary of State May 29, 1998.]

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

SECTION 1. Section 374.3 of the Penal Code is amended to read:

374.3. (a) It is unlawful to dump or cause to be dumped any waste matter in or upon any public or private highway or road, including any portion of the right-of-way thereof, or in or upon any private property into or upon which the public is admitted by easement or license, or upon any private property without the consent of the owner, or in or upon any public park or other public property other than property designated or set aside for that purpose by the governing board or body having charge of that property.

(b) It is unlawful to place, deposit, or dump, or cause to be placed, deposited, or dumped, any rocks or dirt in or upon any private highway or road, including any portion of the right-of-way thereof, or any private property, without the consent of the owner, or in or upon any public park or other public property, without the consent of the state or local agency having jurisdiction over the highway, road, or property.

(c) Any person violating this section is guilty of an infraction. Each day that waste placed, deposited, or dumped in violation of this section remains is a separate violation.

(d) This section does not restrict a private owner in the use of his or her own private property, unless the placing, depositing, or dumping of the waste matter on the property creates a public health and safety hazard, a public nuisance, or a fire hazard, as determined by a local health department, local fire department or district providing fire protection services, or the Department of Forestry and Fire Protection, in which case this section applies.

(e) A person convicted of a violation of this section shall be punished by a mandatory fine of not less than two hundred fifty dollars ($250) nor more than one thousand dollars ($1,000) upon a first conviction, by a mandatory fine of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000) upon a second conviction, and by a mandatory fine of not less than seven hundred fifty dollars ($750) nor more than two thousand five hundred dollars ($2,500) upon a third or subsequent conviction. If

the court finds that the waste matter placed, deposited, or dumped was used tires, the fine prescribed in this subdivision shall be doubled.

(f) The court may require, in addition to any fine imposed upon a conviction, that, as a condition of probation and in addition to any other condition of probation, a person convicted under this section remove, or pay the cost of removing, any waste matter which the convicted person dumped or caused to be dumped upon public or private property.

(g) Except when the court requires the convicted person to remove waste matter which he or she is responsible for dumping as a condition of probation, the court may, in addition to the fine imposed upon a conviction, require as a condition of probation, in addition to any other condition of probation, that any person convicted of a violation of this section pick up waste matter at a time and place within the jurisdiction of the court for not less than 12 hours.

(h) (1) Any person who places, deposits, or dumps, or causes to be placed, deposited, or dumped, waste matter in violation of this section in commercial quantities shall be guilty of a misdemeanor punishable by imprisonment in a county jail for not more than six months and by a fine. The fine is mandatory and shall amount to not less than five hundred dollars ($500) nor more than one thousand five hundred dollars ($1,500) upon a first conviction, not less than one thousand five hundred dollars ($1,500) nor more than three thousand dollars ($3,000) upon a second conviction, and not less than two thousand seven hundred fifty dollars ($2,750) nor more than four thousand dollars ($4,000) upon a third or subsequent conviction.

(2) "Commercial quantities" means an amount of waste matter generated in the course of a trade, business, profession, or occupation, or an amount equal to or in excess of one cubic yard. This subdivision does not apply to the dumping of household waste at a person's residence.

(i) For purposes of this section, "person" means an individual, trust, firm, partnership, joint stock company, joint venture, or corporation.

(j) Except in unusual cases where the interests of justice would be best served by waiving or reducing a fine, the minimum fines provided by this section shall not be waived or reduced.

CHAPTER 51

An act to amend Section 1424 of the Penal Code, relating to criminal proceedings.

[Approved by Governor May 28, 1998. Filed with Secretary of State May 29, 1998.]

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

SECTION 1. Section 1424 of the Penal Code is amended to read:

1424. (a) (1) Notice of a motion to disqualify a district attorney from performing an authorized duty shall be served on the district attorney and the Attorney General at least 10 days before the motion is heard. The notice of motion shall set forth a statement of the facts relevant to the claimed disqualification and the legal authorities relied upon by the moving party. The Attorney General may appear at the hearing on the motion and may file with the court hearing the motion a written opinion on the disqualification issue. The motion may not be granted unless the evidence shows that a conflict of interest exists that would render it unlikely that the defendant would receive a fair trial. An order recusing the district attorney from any proceeding may be reviewed by extraordinary writ or may be appealed by the district attorney or the Attorney General. The order recusing the district attorney shall be stayed pending any review authorized by this section.

(2) An appeal from an order of recusal from a superior court or from a case involving a charge punishable as a felony shall be made pursuant to Chapter 1 (commencing with Section 1235) of Title 9, regardless of the court in which the order is made. An appeal from an order of recusal in a misdemeanor case shall be made pursuant to Chapter 2 (commencing with Section 1466) of Title 11.

(b) (1) Notice of a motion to disqualify a city attorney from performing an authorized duty involving a criminal matter shall be served on the city attorney and the district attorney at least 10 days before the motion is heard. The notice of motion shall set forth a statement of the facts relevant to the claimed disqualification and the legal authorities relied on by the moving party. The district attorney may appear at the hearing on the motion and may file with the court hearing the motion a written opinion on the disqualification issue. The motion may not be granted unless the evidence shows that a conflict of interest exists that would render it unlikely that the defendant would receive a fair trial.

(2) An order recusing the city attorney from a proceeding may be appealed by the city attorney or the district attorney. The order recusing the city attorney shall be stayed pending an appeal authorized by this section. An appeal from an order of disqualification in a misdemeanor case shall be made pursuant to Chapter 2 (commencing with Section 1466) of Title 11.

(c) Motions to disqualify the city attorney and the district attorney shall be separately made.

CHAPTER 52

An act to add Section 20324 to the Public Contract Code, relating to the Sacramento Regional Transit District.

[Approved by Governor May 28, 1998. Filed with Secretary of State May 29, 1998.]

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

SECTION 1. Section 20324 is added to the Public Contract Code, to read:

20324. Notwithstanding Section 20321, the Board of Directors of the Sacramento Regional Transit District may construct all or any part of the Folsom Corridor Light Rail Extension and Double Tracking Project using a design and construct approach. If the board elects to design and construct the project, it shall comply with all of the following procedures:

(a) A request for qualifications shall be prepared and submitted to an adequate number of sources, as determined by the district, to permit reasonable competition consistent with the nature and requirements of that portion of the extension the district elects to design and construct. In addition, notice of the request for qualifications shall be published at least once in a newspaper of general circulation, at least 10 days before the last date on which responses to the request for qualifications may be received. The request for qualifications shall identify the minimum standards that the district has determined shall be met or exceeded by a contractor to successfully design and construct the project described in this section. Those standards may include, but are not limited to, technical experience and capability, financial condition and capacity, organization, and personnel.

(b) All respondents determined by the district to meet or exceed the minimum standards set forth in the request for qualifications shall be considered prequalified. The district may repeat the prequalification process described in subdivision (a). If the district has prequalified at least three respondents, it may invite those prequalified to submit sealed bids for the project based upon plans and specifications previously prepared by the district. Only those who have been prequalified are eligible for award of a contract. Award shall be made to the prequalified bidder submitting the lowest responsible bid.

(c) The board may reject any and all bids and request new bids.

(d) The board shall not give any special preference in the design and construct bidding process authorized by this section to any contractor or consortium of contractors that worked on the initial designs of the Folsom Corridor Light Rail Extension and Double Tracking Project.

SEC. 2. The Legislature finds and declares that a general statute, within the meaning of Section 16 of Article IV of the California Constitution, cannot be made applicable to the Sacramento Regional Transit District, as set forth in Section 1 of this act, and therefore, this act is necessary.

CHAPTER 53

An act to amend Sections 14524, 14525, 14526, 14529, 14529.8, 14530.1, 65082, and 65086.5 of, and to repeal Section 14550 and Article 2 (commencing with Section 14555.1) of Chapter 4 of Division 3 of Title 2 of, the Government Code, to amend Section 99317 of the Public Utilities Code, and to amend Sections 188.5 and 188.10 of, and to repeal Section 164.1 of, the Streets and Highways Code, relating to transportation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 1, 1998. Filed with Secretary of State June 1, 1998.]

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

SECTION 1. Section 14524 of the Government Code is amended to read:

14524. (a) Not later than January 5, 1998, and July 15 of each odd-numbered year thereafter, the department shall submit to the commission a four-year estimate pursuant to Section 164 of the Streets and Highways Code, in annual increments, of all federal and state funds reasonably expected to be available during the following four fiscal years.

(b) The estimate shall specify the amount that may be programmed in each county for regional improvement programs pursuant to paragraph (2) of subdivision (a) of Section 164 of the Streets and Highways Code and shall identify any statutory restriction on the use of particular funds.

(c) For the purpose of estimating revenues, the department shall assume that there will be no changes in existing state and federal statutes. Federal funds that are only available to local government for demonstration projects shall not be included in the revenue estimate. Federal funds for demonstration projects available to the state, or to the state and local governments, shall be included in the revenue estimate.

(d) The method by which the estimate is determined shall be determined by the commission, in consultation with the department, transportation planning agencies, and county transportation commissions.

SEC. 2. Section 14525 of the Government Code is amended to read:

14525. (a) Not later than January 5, 1998, and August 15 of each odd-numbered year thereafter, the commission shall adopt a four-year estimate pursuant to Section 164 of the Streets and Highways Code, in annual increments, of all state and federal funds reasonably expected to be available during the following four fiscal years.

(b) The estimate shall specify the amount that may be programmed in each county for regional improvement programs under paragraph (2) of subdivision (a) of Section 164 of the Streets and Highways Code and shall identify any statutory restriction on the use of particular funds.

(c) For the purpose of estimating revenues, the commission shall assume that there will be no change in existing state and federal statutes. Federal funds that are only available to local government for demonstration projects shall not be included in the revenue estimate. Federal funds for demonstration projects available to the state, or to the state and local governments, shall be included in the revenue estimate.

(d) If the commission finds that legislation pending before the Legislature or the United States Congress may have a significant impact on the fund estimate, the commission may postpone the adoption of the fund estimate for no more than 90 days. Prior to March 1 of each even-numbered year, the commission may amend the estimate following consultation with the department, transportation planning agencies, and county transportation commissions to account for unexpected revenues or other unforeseen circumstances. In the event the fund estimate is amended, the commission shall extend the dates for the submittal of improvement programs as specified in Sections 14526 and 14527 and for the adoption of the state transportation improvement program pursuant to Section 14529.

SEC. 3. Section 14526 of the Government Code is amended to read:

14526. (a) Not later than March 1, 1998, and December 15 of each odd-numbered year thereafter, and after consulting with the transportation planning agencies, county transportation commissions, and transportation authorities, the department shall submit to the commission its interregional transportation improvement program consisting of all of the following:

(1) Projects to improve state highways, pursuant to subdivision (b) of Section 164 of the Streets and Highways Code.

(2) Projects to improve the intercity passenger rail system.

(3) Projects to improve interregional movement of people, vehicles, and goods.

(b) Projects may not be included in the interregional transportation improvement program without a project study report or major investment study.

(c) Major projects shall include current costs updated as of November 1 of the year of submittal and escalated to the appropriate year, and shall be consistent with, and provide the information required in, subdivision (b) of Section 14529.

(d) Projects included in the interregional transportation improvement program shall be consistent with the adopted regional transportation plan.

SEC. 4. Section 14529 of the Government Code is amended to read:

14529. (a) The state transportation improvement program shall include a listing of all capital improvement projects that are expected to receive an allocation of state transportation funds under Section 164 of the Streets and Highways Code, including revenues from transportation bond acts, from the commission during the following four fiscal years. It shall include, and be limited to, the projects to be funded with the following:

(1) Interregional improvement funds.

(2) Regional improvement funds.

(b) For each project, the program shall specify the allocation or expenditure amount and the allocation or expenditure year for each of the following project components:

(1) Completion of all permits and environmental studies.

(2) Preparation of plans, specifications, and estimates.

(3) The acquisition of rights-of-way, including, but not limited to, support activities.

(4) Construction and construction management and engineering, including surveys and inspection.

(c) Funding for right-of-way acquisition and construction for a project may be included in the program only if the commission makes a finding that the sponsoring agency will complete the environmental process and can proceed with right-of-way acquisition or construction within the four-year period. No allocation for right-of-way acquisition or construction shall be made until the completion of the environmental studies and the selection of a preferred alternative.

(d) The commission shall adopt and submit to the Legislature and the Governor, not later than June 1, 1998, and April 1 of each even-numbered year thereafter, a state transportation improvement program. The program shall cover a period of four years, beginning July 1 of the year it is adopted, and shall be a statement of intent by the commission for the allocation or expenditure of funds during those four years. The program shall include projects which are expected to receive funds prior to July 1 of the year of adoption, but for which the commission has not yet allocated funds.

(e) The projects included in the adopted state transportation improvement program shall be limited to those projects submitted or recommended pursuant to Sections 14526 and 14527. The total amount programmed in each fiscal year for each program category shall not exceed the amount specified in the fund estimate adopted under Section 14525.

(f) The state transportation improvement program is a resource management document to assist the state and local entities to plan and implement transportation improvements and to utilize available resources in a cost-effective manner. It is a document for each county and each region to declare their intent to use available state and federal funds in a timely and cost-effective manner.

(g) Prior to the adoption of the state transportation improvement program, the commission shall hold not less than one hearing in northern California and one hearing in southern California to reconcile any objections by any county or regional agency to the department's program or the department's objections to any regional program.

(h) The commission shall incorporate projects that are included in the regional transportation improvement program and are to be funded with regional improvement funds, unless the commission finds that the regional transportation improvement program is not consistent with the guidelines adopted by the commission or is not a cost-effective expenditure of state funds, in which case the commission may reject the regional transportation improvement program in its entirety. The finding shall be based on an objective analysis, including, but not limited to, travel forecast, cost, and air quality. The commission shall hold a public hearing in the affected county or region prior to rejecting the program, or not later than 60 days after rejecting the program. When a regional transportation improvement program is rejected, the regional entity may submit a new regional transportation improvement program for inclusion in the state transportation improvement program. The commission shall not reject a regional transportation improvement program unless, not later than 60 days after the date it received the program, it provided notice to the affected agency that specified the factual basis for its proposed action.

(i) A project may be funded with more than one of the program categories listed in Section 164 of the Streets and Highways Code.

(j) Notwithstanding any other provision of law, no local or regional matching funds shall be required for projects that are included in the state transportation improvement program.

(k) The commission may include a project recommended by a regional transportation planning agency or county transportation commission pursuant to subdivision (c) of Section 14527, if the commission makes a finding, based on an objective analysis, that the recommended project is more cost-effective than a project submitted by the department pursuant to Section 14526.

SEC. 5. Section 14529.8 of the Government Code is amended to read:

14529.8. (a) Funds may be allocated by the commission for each project element during the fiscal year that is identified in the state transportation improvement program and the funds shall be available for expenditure during that fiscal year and the following two fiscal years. Any funds not allocated, or allocated but not encumbered, during the period specified in this section, shall remain in the State Highway Account or Public Transportation Account, or be returned to that particular account, as the case may be.

(b) Upon a finding that an unforeseen and extraordinary circumstance beyond the control of the responsible agency has occurred that justifies an extension, the commission may extend the deadlines specified in subdivision (a). The deadline extensions shall not exceed the period of delay directly attributed to the extraordinary circumstance and in no event be more than 20 months. The commission shall not grant more than one extension.

SEC. 6. Section 14530.1 of the Government Code is amended to read:

14530.1. (a) The department, in cooperation with the commission, transportation planning agencies, and county transportation commissions and local governments, shall develop guidelines for the development of the state transportation improvement program and the incorporation of projects into the state transportation improvement program.

(b) The guidelines shall include, but not be limited to, all of the following:

(1) Standards for project deliverability.

(2) Standards for identifying projects and project components.

(3) Standards for cost estimating.

(4) Programming methods for increases and schedule changes.

(5) Objective criteria for measuring system performance and cost-effectiveness of candidate projects.

(c) The guidelines shall be submitted to the commission by February 1, 1999. After conducting at least one hearing in northern California and one in southern California, the commission shall adopt the guidelines by May 1, 1999.

(d) The guidelines shall be the complete and full statement of the policy, standards, and criteria that the commission intends to use in selecting projects to be included in the state transportation improvement program.

(e) The commission may amend the adopted guidelines after conducting at least one public hearing. The commission shall make a reasonable effort to adopt the amended guidelines prior to its adoption of the fund estimate pursuant to Section 14525. In no event shall the adopted guidelines be amended, or otherwise revised, modified, or altered during the period commencing 30 days after the adoption of the fund estimate pursuant to Section 14525 and before

the adoption of the state transportation improvement program pursuant to Section 14529.

SEC. 7. Section 14550 of the Government Code is repealed.

SEC. 8. Article 2 (commencing with Section 14555.1) of Chapter 4 of Division 3 of Title 2 of the Government Code is repealed.

SEC. 9. Section 65082 of the Government Code is amended to read:

65082. (a) (1) A four-year regional transportation improvement program shall be prepared, adopted, and submitted to the California Transportation Commission on or before January 5, 1998, and December 15 of each odd-numbered year thereafter, updated every two years, pursuant to Sections 65080 and 65080.5 and the guidelines adopted pursuant to Section 14530.1, to include regional transportation improvement projects and programs proposed to be funded, in whole or in part, in the state transportation improvement program.

(2) Major projects shall include current costs updated as of November 1 of the year of submittal and escalated to the appropriate year, and be listed by relative priority, taking into account need, delivery milestone dates, as defined in Section 14525.5, and the availability of funding.

(b) Except for those counties that do not prepare a congestion management program pursuant to Section 65088.3, congestion management programs adopted pursuant to Section 65089 shall be incorporated into the regional transportation improvement program submitted to the commission by December 15 of each odd-numbered year.

(c) Local projects not included in a congestion management program shall not be included in the regional transportation improvement program. Projects and programs adopted pursuant to subdivision (a) shall be consistent with the capital improvement program adopted pursuant to paragraph (5) of subdivision (b) of Section 65089, and the guidelines adopted pursuant to Section 14530.1.

(d) Other projects may be included in the regional transportation improvement program if listed separately.

(e) Unless a county not containing urbanized areas of over 50,000 population notifies the Department of Transportation by July 1 that it intends to prepare a regional transportation improvement program for that county, the department shall, in consultation with the affected local agencies, prepare the program for all counties for which it prepares a regional transportation plan.

(f) The requirements for incorporating a congestion management program into a regional transportation improvement program specified in this section do not apply in those counties that do not prepare a congestion management program in accordance with Section 65088.3.

(g) The regional transportation improvement program may include a reserve of county shares for providing funds in order to match federal funds.

SEC. 10. Section 65086.5 of the Government Code is amended to read:

65086.5. (a) To the extent that the work does not jeopardize the delivery of the projects in the adopted state transportation improvement program, the Department of Transportation may prepare a project studies report for capacity-increasing state highway projects that are not included in the state transportation improvement program. The project studies report shall include the project-related factors of limits, description, scope, costs, and the amount of time needed for initiating construction.

(b) Whenever project studies reports are performed by an entity other than the Department of Transportation, the department shall review and approve the report.

(c) The Department of Transportation may be requested to prepare a project studies report for a capacity-increasing state highway project which is being proposed for inclusion in a future state transportation improvement program. The department shall have 30 days to determine whether it can complete the requested report in a timely fashion. If the department determines that it cannot complete the report in a timely fashion, the requesting entity may prepare the report. Upon submission of a project studies report to the department by the entity, the department shall complete its review and provide its comments to that entity within 60 days from the date of submission. The department shall complete its review and final determination of a report which has been revised to address the department's comments within 30 days following submission of the revised report.

(d) The Department of Transportation, in consultation with representatives of cities, counties, and regional transportation planning agencies, shall prepare draft guidelines for the preparation of project studies reports by all entities. The guidelines shall address the development of reliable cost estimates. The department shall submit the draft guidelines to the California Transportation Commission not later than July 1, 1991. The commission shall adopt the final guidelines not later than October 1, 1991. Guidelines adopted by the commission shall apply only to project studies reports commenced after October 1, 1991.

SEC. 11. Section 99317 of the Public Utilities Code is amended to read:

99317. (a) Funds made available pursuant to subdivision (b) of Section 99315 shall be appropriated to the department for allocation, as directed by the commission, to fund public transit capital improvement projects that maintain or improve public transit service.

(b) Funds made available for capital outlay pursuant to subdivision (a) of Section 14031.6 of the Government Code and subdivision (a) of Section 99315 shall be appropriated to the department, as directed by the commission, solely for capital outlay improvements and rolling stock on intercity rail passenger routes.

(c) 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.

SEC. 12. Section 164.1 of the Streets and Highways Code is repealed.

SEC. 13. Section 188.5 of the Streets and Highways Code is amended to read:

188.5. (a) The Legislature finds and declares all of the following:

(1) The department has determined that in order to provide maximum safety for the traveling public and to ensure continuous and unimpeded operation of the state's transportation network, six state-owned toll bridges are in need of a seismic safety retrofit, and one state-owned toll bridge is in need of a partial retrofit and a partial replacement.

(2) The bridges identified by the department as needing seismic retrofit are the Benicia-Martinez Bridge, the Carquinez Bridge, the Richmond-San Rafael Bridge, the San Mateo-Hayward Bridge, the San Pedro-Terminal Island Bridge (also known as the Vincent Thomas Bridge), the San Diego-Coronado Bridge, and the west span of the San Francisco-Oakland Bay Bridge. The department has also identified the east span of the San Francisco-Oakland Bay Bridge as needing to be replaced. That replacement span will be safer, stronger, longer lasting, and more cost efficient to maintain than completing a seismic retrofit for the current east span.

(3) The south span of the Carquinez Bridge is to be replaced pursuant to Regional Measure 1, as described in subdivision (b) of Section 30917.

(4) The cost estimate to retrofit the state-owned toll bridges and to replace the east span of the San Francisco-Oakland Bay Bridge is two billion six hundred twenty million dollars ($2,620,000,000), eighty million dollars ($80,000,000) of which is for cable suspension pursuant to paragraph (1) of subdivision (b) of Section 31000, as follows:

(A) The Benicia-Martinez Bridge retrofit is one hundred one million dollars ($101,000,000).

(B) The north span of the Carquinez retrofit is eighty-three million dollars ($83,000,000).

(C) The Richmond-San Rafael Bridge retrofit is three hundred twenty-nine million dollars ($329,000,000).

(D) The San Mateo-Hayward Bridge retrofit is one hundred twenty-seven million dollars ($127,000,000).

(E) The San Pedro-Terminal Island Bridge retrofit is forty-five million dollars ($45,000,000).

(F) The San Diego-Coronado Bridge retrofit is ninety-five million dollars ($95,000,000).

(G) The west span of the San Francisco-Oakland Bay Bridge retrofit, as a lifeline bridge, is five hundred fifty-three million dollars ($553,000,000).

(H) Replacement of the east span of the San Francisco-Oakland Bay Bridge is one billion two hundred eighty-five million dollars ($1,285,000,000), which includes eighty million dollars ($80,000,000) for cable suspension.

(b) It is the intent of the Legislature that the following amounts from the following funds shall be allocated through the 2004-05 fiscal year, for the seismic retrofit or replacement of state-owned toll bridges:

(1) Six hundred fifty million dollars ($650,000,000) from the 1996 Seismic Retrofit Account in the Seismic Retrofit Bond Fund of 1996 for the seven state-owned toll bridges identified by the department as requiring seismic safety retrofit or replacement.

(2) One hundred forty million dollars ($140,000,000) in surplus revenues generated under the Seismic Retrofit Bond Act of 1996 that are in excess of the amount actually necessary to complete Phase Two of the state's seismic retrofit program. These excess funds shall be reallocated to assist in financing seismic retrofit of the state-owned toll bridges.

(3) Fifteen million dollars ($15,000,000) from the Vincent Thomas Toll Bridge Revenue Account.

(4) Eight hundred twenty-seven million dollars ($827,000,000) from the seismic retrofit surcharge imposed pursuant to Section 31010.

(5) Thirty-three million dollars ($33,000,000) from the San Diego-Coronado Toll Bridge Revenue Fund.

(6) Not less than seven hundred forty-five million dollars ($745,000,000) from the State Highway Account to be used toward the eight hundred seventy-five million dollars ($875,000,000) state contribution, to be achieved as follows:

(A) (i) Two hundred million dollars ($200,000,000) to be appropriated for the state-local transportation partnership program described in paragraph (7) of subdivision (d) of Section 164 for the 1998–99 fiscal year.

(ii) The remaining funds intended for that program and any program savings to be made available for toll bridge seismic retrofit.

(B) A reduction of not more than seventy-five million dollars ($75,000,000) in the funding level specified in paragraph (4) of subdivision (d) of Section 164 for traffic system management.

(C) Three hundred million dollars ($300,000,000) in accumulated savings by the department achieved from better efficiency and lower costs.

(7) Not more than one hundred thirty million dollars ($130,000,000) from the Transit Capital Improvement Program

funded by the Transportation Planning and Development Account in the State Transportation Fund to be used toward the eight hundred seventy-five million dollars ($875,000,000) state contribution. If the contribution in subparagraph (A) of paragraph (6) exceeds three hundred seventy million dollars ($370,000,000), it is the intent that the amount from the Transit Capital Improvement Program shall be reduced by an amount that is equal to that excess.

(8) The estimated cost of replacing the San Francisco-Oakland Bay Bridge listed in subparagraph (H) of paragraph (4) of subdivision (a) is based on the following assumptions:

(A) The new bridge will be located north adjacent to the existing bridge.

(B) The main span of the bridge will be in the form of a single tower cable suspension design.

(C) The roadway in each direction will consist of five lanes, each lane will be 12 feet wide, and there will be 10-foot shoulders as an emergency lane for public safety purposes on each side of the main-traveled way.

(c) (1) If the actual cost of retrofit or replacement, or both retrofit and replacement, of toll bridges is less than the cost estimate of two billion six hundred twenty million dollars ($2,620,000,000), there shall be a proportional reduction in the amount provided in paragraphs (3), (4), and (5) of subdivision (b) equal to one-half of the difference between the cost estimate and the actual cost, and there shall be an equal reduction in the amount specified in paragraph (6) of subdivision (b).

(2) If the department determines that the actual cost of retrofit or replacement, or both retrofit and replacement, of toll bridges exceeds two billion six hundred twenty million dollars ($2,620,000,000), which includes eighty million dollars ($80,000,000) for cable suspension, the department shall report to the Legislature within 60 days from the date of that determination as to the reason for the increase in cost and shall propose a financial plan to pay for that increase and the Legislature shall thereby adopt a financial plan therefor.

(d) Annually and upon completion of the seismic retrofit of the state-owned toll bridges, the department shall report to the Legislature and the Governor as to the amount of funds used for that purpose from each source specified in subdivision (b) and submit an updated cost estimate.

(e) Notwithstanding any other provision of law, the commission shall adopt fund estimates consistent with subdivision (b) and provide flexibility so that state funds can be made available to match federal funds made available to regional transportation planning agencies.

SEC. 14. Section 188.10 of the Streets and Highways Code, as added by Section 62 of Chapter 622 of the Statutes of 1997, is amended to read:

188.10. (a) The commission, with assistance from the department and regional agencies, shall maintain a long-term balance of shares, shortfalls, and surpluses for regional improvement programs.

(b) The balance shall include all of the following:

(1) Shares from the fund estimate for each state transportation improvement program pursuant to Section 14525 of the Government Code.

(2) Amounts programmed in each state transportation improvement program pursuant to Section 14529 of the Government Code.

(3) Surpluses or shortfalls due to reservations or advancements pursuant to subdivision (j) of Section 188.8.

(4) Amounts deducted or added because of changes in project development costs or a cost increase or savings in the final engineering estimate or the final right-of-way certification estimate at the time of allocation for construction, pursuant to subdivisions (d) and (e) of Section 188.8.

(5) Any supplemental project allocations during or following construction.

(6) Amounts deducted or added because of amendments to the state transportation improvement program that add, delete, or change the scope and cost of regional improvement projects, pursuant to Section 14531 of the Government Code.

(c) The balance through the preceding fiscal year shall be made available for review by all regional agencies at the time of each fund estimate, and by not later than August 15 of each year.

(d) The commission, through the fund estimate, shall restore for the next state transportation improvement program the interregional improvement program level specified in subdivision (a) of Section 164.

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 that the 1998 State Transportation Improvement Program may be adopted as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 54

An act to amend Sections 210, 21455.5, 22451, and 40518 of, and to repeal Sections 210, 22451, and 40518 of, the Vehicle Code, relating to vehicles.

[Approved by Governor June 1, 1998. Filed with Secretary of State June 1, 1998.]

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

SECTION 1. Section 210 of the Vehicle Code, as amended by Section 1 of Chapter 922 of the Statutes of 1995, is amended to read:

210. An "automated enforcement system" is any system operated by a governmental agency, in cooperation with a law enforcement agency, that photographically records a driver's responses to a rail or rail transit signal or crossing gate, or both, or to an official traffic control signal described in Section 21450, and is designed to obtain a clear photograph of a vehicle's license plate and the driver of the vehicle.

SEC. 2. Section 210 of the Vehicle Code, as added by Section 2 of Chapter 922 of the Statutes of 1995, is repealed.

SEC. 3. Section 21455.5 of the Vehicle Code is amended to read:

21455.5. (a) The limit line, the intersection, or other places designated in Section 21455 where a driver is required to stop may be equipped with an automated enforcement system if the system is identified by signs, clearly indicating the system's presence, visible to traffic approaching from all directions, or if signs are posted at all major entrances to the city, including, at a minimum, freeways, bridges, and state highway routes.

Any city utilizing an automated traffic enforcement system at intersections shall, prior to issuing citations, commence a program to issue only warning notices for 30 days. The local jurisdiction shall also make a public announcement of the automated traffic enforcement system at least 30 days prior to the commencement of the enforcement program.

Only a governmental agency, in cooperation with a law enforcement agency, may operate an automated enforcement system.

(b) Notwithstanding Section 6253 of the Government Code, or any other provision of law, photographic records made by an automated enforcement system shall be confidential, and shall be made available only to governmental agencies and law enforcement agencies for the purposes of this article.

(c) Notwithstanding subdivision (b), the registered owner or any individual identified by the registered owner as the driver of the vehicle at the time of the alleged violation shall be permitted to review the photographic evidence of the alleged violation.

SEC. 4. Section 22451 of the Vehicle Code, as amended by Section 5 of Chapter 922 of the Statutes of 1995, is amended to read:

22451. (a) The driver of any vehicle approaching a railroad or rail transit grade crossing shall stop not less than 15 feet from the nearest rail and shall not proceed until he or she can do so safely, whenever the following conditions exist:

(1) A clearly visible electric or mechanical signal device or a flagman gives warning of the approach or passage of a train or car.

(2) An approaching train or car is plainly visible or is emitting an audible signal and, by reason of its speed or nearness, is an immediate hazard.

(b) No driver shall proceed through, around, or under any railroad or rail transit crossing gate while the gate is closed.

(c) Whenever a railroad or rail transit crossing is equipped with an automated enforcement system, a notice of a violation of this section is subject to the procedures provided in Section 40518.

SEC. 5. Section 22451 of the Vehicle Code, as added by Section 6 of Chapter 922 of the Statutes of 1995, is repealed.

SEC. 6. Section 40518 of the Vehicle Code, as amended by Section 8 of Chapter 922 of the Statutes of 1995, is amended to read:

40518. (a) Whenever a written notice to appear has been issued by a peace officer or by a qualified employee of a law enforcement agency on a form approved by the Judicial Council for an alleged violation of Section 22451, or, based on an alleged violation of Section 21453, 21455, or 22101 recorded by an automated enforcement system pursuant to Section 21455.5 or 22451, and delivered by mail within 15 days of the alleged violation to the current address of the registered owner of the vehicle on file with the department, with a certificate of mailing obtained as evidence of service, an exact and legible duplicate copy of the notice when filed with the magistrate shall constitute a complaint to which the defendant may enter a plea. Preparation and delivery of a notice to appear pursuant to this section is not an arrest.

(b) A notice to appear shall contain the name and address of the person, the license plate number of the person's vehicle, the violation charged, including a description of the offense, and the time and place when, and where, the person may appear in court or before a person authorized to receive a deposit of bail. The time specified shall be at least 10 days after the notice to appear is delivered.

SEC. 7. Section 40518 of the Vehicle Code, as added by Section 9 of Chapter 922 of the Statutes of 1995, is repealed.

CHAPTER 55

An act to amend Section 51553 of the Education Code, and to amend Sections 1202.1 and 12022.85 of the Penal Code, relating to sexual crimes, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 4, 1998. Filed with Secretary of State June 5, 1998.]

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

SECTION 1. Section 51553 of the Education Code is amended to read:

51553. (a) All public elementary, junior high, and senior high school classes that teach sex education and discuss sexual intercourse shall emphasize that abstinence from sexual intercourse is the only protection that is 100 percent effective against unwanted teenage pregnancy, sexually transmitted diseases, and acquired immune deficiency syndrome (AIDS) when transmitted sexually. All material and instruction in classes that teach sex education and discuss sexual intercourse shall be age appropriate.

(b) All sex education courses that discuss sexual intercourse shall satisfy the following criteria:

(1) Course material and instruction shall be age appropriate.

(2) Course material and instruction shall stress that abstinence is the only contraceptive method which is 100 percent effective, and that all other methods of contraception carry a risk of failure in preventing unwanted teenage pregnancy. Statistics based on the latest medical information shall be provided to pupils citing the failure and success rates of condoms and other contraceptives in preventing pregnancy.

(3) Course material and instruction shall stress that sexually transmitted diseases are serious possible hazards of sexual intercourse. Pupils shall be provided with statistics based on the latest medical information citing the failure and success rates of condoms in preventing AIDS and other sexually transmitted diseases.

(4) Course material and instruction shall include a discussion of the possible emotional and psychological consequences of preadolescent and adolescent sexual intercourse outside of marriage and the consequences of unwanted adolescent pregnancy.

(5) Course material and instruction shall stress that pupils should abstain from sexual intercourse until they are ready for marriage.

(6) Course material and instruction shall teach honor and respect for monogamous heterosexual marriage.

(7) Course material and instruction shall advise pupils of the laws pertaining to their financial responsibility to children born in and out of wedlock.

(8) Course material and instruction shall advise pupils that it is unlawful for males or females of any age to have sexual relations with males or females under the age of 18 years to whom they are not married, pursuant to Section 261.5 of the Penal Code.

(9) Course material and instruction shall emphasize that the pupil has the power to control personal behavior. Pupils shall be encouraged to base their actions on reasoning, self-discipline, sense of responsibility, self-control, and ethical considerations, such as respect for one's self and others.

(10) Course material and instruction shall teach pupils to not make unwanted physical and verbal sexual advances, how to say "no" to unwanted sexual advances, and shall include information about sexual assault, verbal, physical, and visual, including, but not limited to, nonconsensual sexual advances, nonconsensual physical sexual contact, and rape by an acquaintance, commonly referred to as "date rape." This course material and instruction shall contain methods of preventing sexual assault by an acquaintance, including exercising good judgment and avoiding behavior that impairs good judgment, and shall also encourage youth to resist negative peer pressure. This course material and instruction also shall inform pupils of the potential legal consequences of sexual assault by an acquaintance. Specifically, pupils shall be advised that it is unlawful to touch an intimate part of another person, as specified in subdivision (d) of Section 243.4 of the Penal Code.

Pupils also shall be taught that it is wrong to take advantage of, or to exploit, another person.

Course material and instruction given pursuant to this paragraph shall be age appropriate.

SEC. 2. Section 1202.1 of the Penal Code is amended to read:

1202.1. (a) Notwithstanding Sections 120975 and 120990 of the Health and Safety Code, the court shall order every person who is convicted of, or adjudged by the court to be a person described by Section 601 or 602 of the Welfare and Institutions Code as provided in Section 725 of the Welfare and Institutions Code by reason of a violation of, a sexual offense listed in subdivision (e), whether or not a sentence or fine is imposed or probation is granted, to submit to a blood test for evidence of antibodies to the probable causative agent of acquired immune deficiency syndrome (AIDS). Each person tested under this section shall be informed of the results of the blood test.

(b) Notwithstanding Section 120980 of the Health and Safety Code, the results of the blood test to detect antibodies to the probable causative agent of AIDS shall be transmitted by the clerk of the court to the Department of Justice and the local health officer.

(c) Notwithstanding Section 120980 of the Health and Safety Code, the Department of Justice shall provide the results of a test or tests as to persons under investigation or being prosecuted under Section 647f or 12022.85, if the results are on file with the department, to the defense attorney upon request; and the results also shall be available to the prosecuting attorney upon request for the purpose of either preparing counts for a subsequent offense under Section 647f or sentence enhancement under Section 12022.85 or complying with subdivision (d).

(d) (1) In every case in which a person is convicted of a sexual offense listed in subdivision (e) or adjudged by the court to be a person described by Section 601 or 602 of the Welfare and Institutions Code as provided in Section 725 of the Welfare and Institutions Code

by reason of the commission of a sexual offense listed in subdivision (e), the prosecutor or the prosecutor's victim-witness assistance bureau shall advise the victim of his or her right to receive the results of the blood test performed pursuant to subdivision (a). The prosecutor or the prosecutor's victim-witness assistance bureau shall refer the victim to the local health officer for counseling to assist him or her in understanding the extent to which the particular circumstances of the crime may or may not have placed the victim at risk of transmission of human immunodeficiency virus (HIV) from the accused, to ensure that the victim understands the limitations and benefits of current tests for HIV, and to assist the victim in determining whether he or she should make the request.

(2) Notwithstanding any other law, upon the victim's request, the local health officer shall be responsible for disclosing test results to the victim who requested the test and the person who was tested. However, as specified in subdivision (g), positive test results shall not be disclosed to the victim or the person who was tested without offering or providing professional counseling appropriate to the circumstances as follows:

(A) To help the victim understand the extent to which the particular circumstances of the crime may or may not have put the victim at risk of transmission of HIV from the perpetrator.

(B) To ensure that the victim understands both the benefits and limitations of the current tests for HIV.

(C) To obtain referrals to appropriate health care and support services.

(e) For purposes of this section, "sexual offense" includes any of the following:

(1) Rape in violation of Section 261.

(2) Unlawful intercourse with a person under 18 years of age in violation of Section 261.5.

(3) Rape of a spouse in violation of Section 262.

(4) Sodomy in violation of Section 286.

(5) Oral copulation in violation of Section 288a.

(6) Lewd or lascivious acts with a child in violation of Section 288, if the court finds that there is probable cause to believe that blood, semen, or any other bodily fluid capable of transmitting HIV has been transferred from the defendant to the victim. For purposes of this paragraph, the court shall note its finding on the court docket and minute order if one is prepared.

(f) Any blood tested pursuant to subdivision (a) shall be subjected to appropriate confirmatory tests to ensure accuracy of the first test results, and under no circumstances shall test results be transmitted to the victim or the person who is tested unless any initially reactive test result has been confirmed by appropriate confirmatory tests for positive reactors.

(g) The local health officer shall be responsible for disclosing test results to the victim who requested the test and the person who was

tested. However, positive test results shall not be disclosed to the victim or the person who was tested without offering or providing professional counseling appropriate to the circumstances.

(h) The local health officer and the victim shall comply with all laws and policies relating to medical confidentiality, subject to the disclosure authorized by subdivisions (g) and (i).

(i) Any victim who receives information from the local health officer pursuant to subdivision (g) may disclose the information as he or she deems necessary to protect his or her health and safety or the health and safety of his or her family or sexual partner.

(j) Any person who transmits test results or discloses information pursuant to this section shall be immune from civil liability for any action taken in compliance with this section.

SEC. 3. Section 12022.85 of the Penal Code is amended to read:

12022.85. (a) Any person who violates one or more of the offenses listed in subdivision (b) with knowledge that he or she has acquired immune deficiency syndrome (AIDS) or with the knowledge that he or she carries antibodies of the human immunodeficiency virus at the time of the commission of those offenses, shall receive a three-year enhancement for each violation in addition to the sentence provided under those sections.

(b) Subdivision (a) applies to the following crimes:

(1) Rape in violation of Section 261.

(2) Unlawful intercourse with a person under 18 years of age in violation of Section 261.5.

(3) Rape of a spouse in violation of Section 262.

(4) Sodomy in violation of Section 286.

(5) Oral copulation in violation of Section 288a.

(c) For purposes of proving the knowledge requirement of this section, the prosecuting attorney may use test results received under subdivision (c) of Section 1202.1 or subdivision (g) of Section 1202.6.

SEC. 4. It is the intent of the Legislature in enacting this act solely to update and correct cross-references to reflect the fact that the provisions of Section 261.5 of the Penal Code were made gender neutral by Chapter 596 of the Statutes of 1993.

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 that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, 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 shall become operative on July 1, 1998.

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 expeditiously update and correct cross-references to various statutes to reflect the fact that the provisions of Section 261.5 of the Penal Code were made gender neutral by Chapter 596 of the Statutes of 1993, and to also provide notice thereof in advance of the operation of this act, it is necessary that this act take effect immediately.

CHAPTER 56

An act to amend Section 61601.25 of the Government Code, relating to community services districts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 4, 1998. Filed with Secretary of State June 5, 1998.]

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

SECTION 1. Section 61601.25 of the Government Code is amended to read:

61601.25. (a) In addition to the purposes authorized by this chapter, the Board of Directors of the Bear Valley Community Services District may, pursuant to Section 61601, exercise the following powers:

(1) Provide, maintain, operate, and contract for facilities and services for the control, removal, and eradication of local pine bark beetle infestations in accordance with any required plan or program approved by the Department of Forestry and Fire Protection to ensure consistency with the policies of the Board of Forestry.

(2) Acquire, construct, improve, or maintain mail receptacle facilities for mail delivery services to the district and its inhabitants.

(b) Notwithstanding Sections 61600 and 61601, whenever the board of directors determines, by resolution, that it is feasible, economically sound, and in the public interest for the district to exercise its power, the board may contract with the United States Postal Service for mail delivery services to the district and its inhabitants, including, but not limited to, leasing space to the United States Postal Service, a nonprofit corporation, or a private entity for mail delivery and packaging services.

(c) If the board does contract with the United States Postal Service to provide mail delivery services as provided in subdivision (b), the board shall submit a ballot measure to the voters of the district no later than November 3, 1998, for this purpose. If the voters reject the

measure, the board shall terminate the contract at the earliest reasonable time.

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

In order to enable the Bear Valley Community Services District to provide mail delivery services in a timely, effective, and efficient manner, it is necessary that this act take effect immediately.

CHAPTER 57

An act to amend Sections 19601.2, 19613, and 19619.6 of the Business and Professions Code, relating to horse racing.

[Approved by Governor June 4, 1998. Filed with Secretary of State June 5, 1998.]

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

SECTION 1. Section 19601.2 of the Business and Professions Code is amended to read:

19601.2. During calendar periods when the San Mateo County Fair and the Humboldt County Fair both conduct race meetings, the San Mateo County Fair shall be the association authorized to distribute the signal and accept wagers on out-of-zone races if it complies with the conditions specified in subdivision (a) of Section 19601. The amounts deducted from out-of-zone wagering shall be distributed as provided in subdivisions (b) and (d) of Section 19601, except that from license fees to be distributed pursuant to this section, the San Mateo County Fair shall retain an amount equal to three-fourths of 1 percent of the out-of-zone wagering handle and shall distribute that amount to the Humboldt County Fair not less than seven days after the close of the racing meeting.

SEC. 2. Section 19613 of the Business and Professions Code, as added by Section 5 of Chapter 595 of the Statues of 1996, is amended to read:

19613. (a) Except as provided in subdivisions (b), (c), (d), (e), and (f), the portion deducted for purses pursuant to this chapter shall be paid to or for the benefit of the horsemen at the racing meeting.

(b) Any association other than a fair that conducts a thoroughbred racing meeting shall pay to the owners' organization contracting with the association with respect to the conduct of racing meetings for administrative expenses and services rendered to owners, an amount not to exceed two-thirds of $1^1/_2$ percent of the portion, and to a trainers' organization for administrative expenses and services rendered to trainers and backstretch employees an amount

equivalent to one-third of $1^1/_2$ percent of the portion. That association shall also pay an amount for a pension plan for backstretch personnel to be administered by the trainers' organization equivalent to an additional 1 percent of the portion. The remainder of the portion shall be distributed as purses.

(c) Any other association may pay to the horsemen's organization contracting with the association with respect to the conduct of racing meetings for administrative expenses and services rendered to horsemen an amount out of the portion as may be determined by the association by agreement or otherwise, but, in all events, shall include, relative to a thoroughbred horsemen's organization racing, 1 percent of the portion for a pension plan for backstretch personnel to be administered by the trainers' organization. The remainder of the portion shall be distributed as purses.

(d) Notwithstanding subdivisions (b) and (c), any association conducting a fair racing meeting or conducting a mixed breed racing meeting shall pay to the horsemen's organizations contracting with the association with respect to the conduct of races for their respective breeds of horses at the meetings for administrative expenses and services rendered to their respective horsemen those amounts out of the portion as determined by the horsemen's organization for the respective breeds with the approval of the board.

Pursuant to this subdivision, amounts not to exceed 3 percent of the portion for the owners' and trainers' organizations shall be distributed to any thoroughbred owners' and trainers' organizations contracting with an association for a fair racing meeting or participating in mixed breed racing meetings as follows: two-thirds of 1 percent to the owners' organization and one-third of 1 percent to the trainers' organization for administrative expenses and services rendered to both owners and trainers, 1 percent for welfare funds, and 1 percent for a pension program for backstretch personnel, to be administered by the thoroughbred trainers' organization.

(e) Any association other than a fair that conducts a quarter horse racing meeting, except a mixed breed meeting, shall pay to the horsemen's organization contracting with the association with respect to the conduct of racing meetings for administrative expenses and services rendered to horsemen, an amount not to exceed 3 percent of the portion. The remainder of the portion shall be distributed as purses.

(f) For racing meetings other than thoroughbred meetings, if no contract has been signed between the association conducting the racing meeting and the organization representing the horsemen by the time the racing meeting commences, the distribution of purses shall be governed by the following:

(1) If the association conducted a racing meeting within the past 15 months and a contract was in existence for that meeting with the horsemen's organization and the association is conducting a subsequent meeting for the same breed or mixed breeds, the

amounts payable to the horsemen's organization under subdivision (c) shall be computed under the provisions of the last signed contract between the parties.

(2) This subdivision applies regardless of the cause of the failure to execute a contract, whether that failure is a result of inadvertence or otherwise.

(3) For racing meetings that do not come within paragraph (1), the board shall, within 15 days after the commencement of the racing meeting, determine the amounts payable to the horsemen's organization for administrative expenses and services, and provide for the direct payment of those amounts.

(g) Amounts distributed pursuant to this section are derived from owners' purses.

(h) For the purposes of this section, the following definitions shall apply:

(1) "Owner" means a person currently licensed by the board as an owner of a thoroughbred racehorse.

(2) "Trainer" means a person currently licensed by the board as an owner and trainer or as a trainer of a thoroughbred racehorse.

SEC. 3. Section 19613 of the Business and Professions Code, as added by Section 6 of Chapter 595 of the Statutes of 1996, is repealed.

SEC. 4. Section 19619.6 of the Business and Professions Code is amended to read:

19619.6. Every association or fair that provides a live audiovisual signal of its program to a satellite wagering facility pursuant to Sections 19608 and 19608.1 shall cooperate with the operator of the satellite wagering facility with respect to arrangements with the ontrack totalizator company for access to its ontrack totalizator system for purposes of combining parimutuel pools.

CHAPTER 58

An act to amend Section 1797.98a of, and to amend the heading of Chapter 2.5 (commencing with Section 1797.98a) of Division 2.5 of, the Health and Safety Code, relating to emergency medical services.

[Approved by Governor June 4, 1998. Filed with Secretary of State June 5, 1998.]

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

SECTION 1. (a) The Legislature finds and declares that in 1987 the State of California faced a crisis in emergency medical services, as trauma centers and emergency rooms were threatened with closure due to high volumes of nonpaying patients. In response to this crisis, Senator Ken Maddy introduced Senate Bill No. 12 (hereafter SB 12) to establish a new fund, The Emergency Medical Services

(EMS) Fund, based on revenues from penalty assessments, to partially cover the costs incurred for nonpaying patients by emergency physicians, on-call physicians, hospitals, trauma centers, and county emergency medical services systems. Under Senator Maddy's leadership, SB 12 moved through the legislative process and was signed into law.

(b) After enactment, SB 12 and the creation of the EMS Fund was widely recognized as a successful approach for dealing with the crisis in emergency medical services, and in 1988 the Legislature doubled the amount of revenues deposited into the EMS Fund.

(c) After the adoption of Proposition 99, the Tobacco Tax Initiative, the success of the EMS Fund was again recognized by the Legislature, which adopted the EMS Fund as a mechanism for disbursing tobacco tax revenues to physicians for nonpaying patients.

(d) Senator Ken Maddy again demonstrated leadership in furthering emergency medical care by authoring successful legislation, Senate Bill No. 2098 in 1990, and Senate Bill No. 946 in 1991, to further refine the administration of the EMS Fund in California and to make certain the moneys collected were disbursed appropriately. Over the 10 year period the EMS Fund has been in operation, Senator Ken Maddy has vigorously protected its existence, in order that emergency patients may continue to be well served in California's hospitals.

(e) Additionally, Senator Ken Maddy has been a recognized leader in other emergency medical services legislation. He was the author of the legislation establishing the emergency medical services patient transfer mechanisms, also contained in SB 12 of 1987, and he was the author of Senate Bill No. 534 in 1983, which authorized and governed the establishment of trauma centers in California.

(f) It is therefore appropriate, in recognition of Senator Ken Maddy and his efforts in authoring the original legislation to create the EMS Fund and in enhancing the fund's effectiveness during its 10 years of existence, that the EMS Fund be renamed the Maddy Emergency Medical Services Fund.

SEC. 2. The heading of Chapter 2.5 (commencing with Section 1797.98a) of Division 2.5 of the Health and Safety Code is amended to read:

CHAPTER 2.5. THE MADDY EMERGENCY MEDICAL SERVICES FUND

SEC. 3. Section 1797.98a of the Health and Safety Code is amended to read:

1797.98a. (a) The fund provided for in this chapter shall be known as the Maddy Emergency Medical Services (EMS) Fund.

(b) Each county may establish an emergency medical services fund, upon adoption of a resolution by the board of supervisors. The money in the fund shall be available for the reimbursements required by this chapter. The fund shall be administered by each county, except that a county electing to have the state administer its

medically indigent services program may also elect to have its emergency medical services fund administered by the state. Costs of administering the fund shall be reimbursed by the fund, up to 10 percent of the amount of the fund. All interest earned on moneys in the fund shall be deposited in the fund for disbursement as specified in this section. The fund shall be utilized to reimburse physicians and surgeons and hospitals for patients who do not make payment for emergency medical services and for other emergency medical services purposes as determined by each county. Fifty-eight percent of the balance of the money in the fund after costs of administration shall be distributed to physicians and surgeons for emergency services provided by all physicians and surgeons, except those physicians and surgeons employed by county hospitals, in general acute care hospitals that provide basic or comprehensive emergency services up to the time the patient is stabilized, 25 percent of the balance of the fund after costs of administration shall be distributed only to hospitals providing disproportionate trauma and emergency medical care services, and 17 percent of the balance of the fund after costs of administration shall be distributed for other emergency medical services purposes as determined by each county, including, but not limited to, the funding of regional poison control centers.

(c) The source of the money in the fund shall be the penalty assessment made for this purpose, as provided in Section 76000 of the Government Code.

CHAPTER 59

An act to amend Sections 27, 101, 112, 130, 149, 6710, 6732, 6787, 8706, and 8710 of, and to add Sections 6706.3, 6732.3, and 6732.4 to, the Business and Professions Code, to amend Section 26509 of the Government Code, and to amend Section 25208.9 of the Health and Safety Code, relating to professional engineers.

[Approved by Governor June 4, 1998. Filed with Secretary of State June 5, 1998.]

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

SECTION 1. Section 27 of the Business and Professions Code is amended to read:

27. (a) Every entity specified in subdivision (b), on or before January 1, 1999, shall provide on the Internet information regarding the status of every license issued by that entity in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). The

public information to be provided on the Internet shall include information on suspensions and revocations of licenses issued by a board and other related enforcement action taken by a board relative to persons, businesses, or facilities subject to licensure or regulation by a board. In providing information on the Internet, each entity shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records. The information shall not include personal information including home address (unless used as a business address), home telephone number, date of birth, or social security number.

(b) Each of the following entities within the Department of Consumer Affairs shall comply with the requirements of this section:

(1) The Acupuncture Committee shall disclose information on its licensees.

(2) The Board of Behavioral Science Examiners shall disclose information on its licensees, including marriage, family and child counselors; licensed clinical social workers; and licensed educational psychologists.

(3) The Board of Dental Examiners shall disclose information on its licensees.

(4) The State Board of Optometry shall disclose information regarding certificates of registration to practice optometry, statements of licensure, optometric corporation registrations, branch office licenses, and fictitious name permits of their licensees.

(5) The Board for Professional Engineers and Land Surveyors shall disclose information on its registrants and licensees.

(6) The Structural Pest Control Board shall disclose information on its licensees, including applicators; field representatives; and operators in the areas of fumigation, general pest and wood destroying pests and organisms, and wood roof cleaning and treatment.

(7) The Bureau of Automotive Repair shall disclose information on its licensees, including auto repair dealers, smog stations, lamp and brake stations, smog check technicians, and smog inspection certification stations.

(8) The Bureau of Electronic and Appliance Repair shall disclose information on its licensees, including major appliance repair dealers, combination dealers (electronic and appliance), electronic repair dealers, service contract sellers, and service contract administrators.

(9) The cemetery program shall disclose information on its licensees, including cemetery brokers, cemetery salespersons, crematories, and cremated remains disposers.

(10) The funeral program shall disclose information on its licensees, including, embalmers, funeral director establishments, and funeral directors.

(11) The Contractors' State License Board shall disclose information on its licensees in accordance with Chapter 9 (commencing with Section 7000) of Division 3.

(c) "Internet" for the purposes of this section has the meaning set forth in paragraph (6) of subdivision (e) of Section 17538 of the Business and Professions Code.

SEC. 2. Section 101 of the Business and Professions Code is amended to read:

101. The department is comprised of:

(a) The Board of Dental Examiners of California.

(b) The Medical Board of California.

(c) The State Board of Optometry.

(d) The California State Board of Pharmacy.

(e) The Veterinary Medical Board.

(f) The Board of Accountancy.

(g) The California State Board of Architectural Examiners.

(h) The State Board of Barbering and Cosmetology.

(i) The Board for Professional Engineers and Land Surveyors.

(j) The Contractors' State License Board.

(k) The State Board of Funeral Directors and Embalmers.

(*l*) The Structural Pest Control Board.

(m) The Bureau of Home Furnishings and Thermal Insulation.

(n) The Board of Registered Nursing.

(o) The Board of Behavioral Science Examiners.

(p) The State Athletic Commission.

(q) The Cemetery Board.

(r) The State Board of Guide Dogs for the Blind.

(s) The Bureau of Security and Investigative Services.

(t) The Court Reporters Board of California.

(u) The Board of Vocational Nursing and Psychiatric Technicians.

(v) The California State Board of Landscape Architects.

(w) The Bureau of Electronic and Appliance Repair.

(x) The Division of Investigation.

(y) The Bureau of Automotive Repair.

(z) The State Board of Registration for Geologists and Geophysicists.

(aa) The State Board of Nursing Home Administrators.

(ab) The Respiratory Care Examining Committee.

(ac) The Acupuncture Examining Committee.

(ad) The Board of Psychology.

(ae) The California Board of Podiatric Medicine.

(af) The Physical Therapy Board.

(ag) The Arbitration Review Program.

(ah) The Committee on Dental Auxiliaries.

(ai) The Hearing Aid Dispensers Examining Committee.

(aj) The Physician Assistant Examining Committee.

(ak) The Speech-Language Pathology and Audiology Board.

(a*l*) The Tax Preparers Program.

(am) Any other boards, offices, or officers subject to its jurisdiction by law.

SEC. 3. Section 112 of the Business and Professions Code is amended to read:

112. Notwithstanding any other provision of this code, no agency in the department, with the exception of the Board for Professional Engineers and Land Surveyors, shall be required to compile, publish, sell, or otherwise distribute a directory. When an agency deems it necessary to compile and publish a directory, the agency shall cooperate with the director in determining its form and content, the time and frequency of its publication, the persons to whom it is to be sold or otherwise distributed, and its price if it is sold. Any agency that requires the approval of the director for the compilation, publication, or distribution of a directory, under the law in effect at the time the amendment made to this section at the 1970 Regular Session of the Legislature becomes effective, shall continue to require that approval. As used in this section, "directory" means a directory, roster, register, or similar compilation of the names of persons who hold a license, certificate, permit, registration, or similar indicia of authority from the agency.

SEC. 4. Section 130 of the Business and Professions Code is amended to read:

130. (a) Notwithstanding any other provision of law, the term of office of any member of an agency designated in subdivision (b) shall be for a term of four years expiring on June 1.

(b) Subdivision (a) applies to the following boards or committees:

(1) Medical Board of California.
(2) California Board of Podiatric Medicine.
(3) Physical Therapy Examining Committee.
(4) Board of Registered Nursing.
(5) Board of Vocational Nursing and Psychiatric Technicians.
(6) State Board of Optometry.
(7) California State Board of Pharmacy.
(8) Veterinary Medical Board.
(9) California Board of Architectural Examiners.
(10) California State Board of Landscape Architects.
(11) State Board of Barbering and Cosmetology.
(12) Board for Professional Engineers and Land Surveyors.
(13) Contractors' State License Board.
(14) State Board of Guide Dogs for the Blind.
(15) State Board of Funeral Directors and Embalmers.
(16) Board of Behavioral Science Examiners.
(17) Structural Pest Control Board.
(18) Cemetery Board.
(19) Bureau of Electronic and Appliance Repair Advisory Board.
(20) Court Reporters Board of California.
(21) State Board of Registration for Geologists and Geophysicists.
(22) State Athletic Commission.

(23) Osteopathic Medical Board of California.
(24) The Respiratory Care Board of California.
(25) The Acupuncture Examining Committee.
(26) The Board of Psychology.

SEC. 5. Section 149 of the Business and Professions Code is amended to read:

149. (a) If, upon investigation, an agency designated in subdivision (e) has probable cause to believe that a person is advertising in a telephone directory with respect to the offering or performance of services, without being properly licensed by or registered with the agency to offer or perform those services, the agency may issue a citation under Section 148 containing an order of correction that requires the violator to do both of the following:

(1) Cease the unlawful advertising.

(2) Notify the telephone company furnishing services to the violator to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising.

(b) This action is stayed if the person to whom a citation is issued under subdivision (a) notifies the agency in writing that he or she intends to contest the citation. The agency shall afford an opportunity for a hearing, as specified in Section 125.9.

(c) If the person to whom a citation and order of correction is issued under subdivision (a) fails to comply with the order of correction after that order is final, the agency shall inform the Public Utilities Commission of the violation and the Public Utilities Commission shall require the telephone corporation furnishing services to that person to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising.

(d) The good faith compliance by a telephone corporation with an order of the Public Utilities Commission to terminate service issued pursuant to this section shall constitute a complete defense to any civil or criminal action brought against the telephone corporation arising from the termination of service.

(e) Subdivision (a) shall apply to the following boards, bureaus, committees, commissions, or programs:

(1) The State Board of Barbering and Cosmetology.
(2) The State Board of Funeral Directors and Embalmers.
(3) The Veterinary Medical Board.
(4) The Hearing Aid Dispensers Examining Committee.
(5) The State Board of Landscape Architects.
(6) The California Board of Podiatric Medicine.
(7) The Respiratory Care Board of California.
(8) The Bureau of Home Furnishings and Thermal Insulation.
(9) The Bureau of Security and Investigative Services.
(10) The Bureau of Electronic and Appliance Repair.
(11) The Bureau of Automotive Repair.
(12) The Tax Preparers Program.
(13) The California Board of Architectural Examiners.

(14) The Speech-Language Pathology and Audiology Examining Committee.

(15) The Board for Professional Engineers and Land Surveyors.

(16) The Board of Behavioral Science Examiners.

(17) The State Board of Registration for Geologists and Geophysicists.

(18) The Structural Pest Control Board.

(19) The Acupuncture Examining Committee.

(20) The Board of Psychology.

(21) The State Board of Accountancy.

SEC. 6. Section 6706.3 is added to the Business and Professions Code, to read:

6706.3. Any reference in any law or regulation to a registered engineer, or to a registered civil, electrical, or mechanical engineer, is deemed to refer to a licensed engineer, or to a licensed civil, electrical, or mechanical engineer, as the case may be.

SEC. 7. Section 6710 of the Business and Professions Code is amended to read:

6710. (a) There is in the Department of Consumer Affairs a Board for Professional Engineers and Land Surveyors, which consists of 13 members.

(b) Any reference in any law or regulation to the Board of Registration for Professional Engineers and Land Surveyors is deemed to refer to the Board for Professional Engineers and Land Surveyors.

(c) This section shall become inoperative on July 1, 2000, and, as of January 1, 2001, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2001, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473). However, the review of the board shall be limited to only those unresolved issues identified by the Joint Legislative Sunset Review Committee.

SEC. 8. Section 6732 of the Business and Professions Code is amended to read:

6732. It is unlawful for anyone other than a professional engineer licensed under this chapter to stamp or seal any plans, specifications, plats, reports, or other documents with the seal or stamp of a professional engineer, or in any manner, use the title "professional engineer," "licensed engineer," "registered engineer," or "consulting engineer," or any of the following branch titles: "agricultural engineer," "chemical engineer," "civil engineer," "control system engineer," "electrical engineer," "fire protection engineer," "industrial engineer," "manufacturing engineer," "mechanical engineer," "metallurgical engineer," "nuclear engineer," "petroleum engineer," or "traffic engineer," or any combination of these words and phrases or abbreviations thereof unless licensed under this chapter.

SEC. 9. Section 6732.3 is added to the Business and Professions Code, to read:

6732.3. (a) Any person who has received from the board a registration or license in corrosion, quality, or safety engineering, and who holds a valid registration or license to practice professional engineering under this chapter, may continue to use the branch title of the branch in which the professional engineer is legally registered. A person holding a registration in corrosion, quality, or safety engineering is subject to the registration or license renewal provisions of this chapter.

(b) The professional engineer also may continue to use the title of "professional engineer," "licensed engineer," "registered engineer," or "consulting engineer."

SEC. 10. Section 6732.4 is added to the Business and Professions Code, to read:

6732.4. Notwithstanding any other provision of law, any person who has applied for registration as a corrosion, quality, or safety engineer, and who has completed the written examination in one or more of these branch titles prior to January 1, 1999, shall be issued a registration in the branch title for which the applicant was examined, provided that he or she has met all other qualifications for registration. The board shall not administer any examination for registration as a corrosion, quality, or safety engineer on or after January 1, 1999.

SEC. 11. Section 6787 of the Business and Professions Code is amended to read:

6787. Every person is guilty of a misdemeanor and for each offense of which he or she is convicted is punishable by a fine of not more than one thousand dollars ($1,000) or by imprisonment not to exceed three months, or by both that fine and imprisonment:

(a) Who, unless he or she is exempt from registration under this chapter, practices or offers to practice civil, electrical, or mechanical engineering in this state according to the provisions of this chapter without legal authorization.

(b) Who presents or attempts to file as his or her own the certificate of registration of another.

(c) Who gives false evidence of any kind to the board, or to any member thereof, in obtaining a certificate of registration.

(d) Who impersonates or uses the seal of any other practitioner.

(e) Who uses an expired or revoked certificate of registration.

(f) Who shall represent himself or herself as, or use the title of, registered civil, electrical, or mechanical engineer, or any other title whereby such person could be considered as practicing or offering to practice civil, electrical, or mechanical engineering in any of its branches, unless he or she is correspondingly qualified by registration as a civil, electrical, or mechanical engineer under this chapter.

(g) Who, unless appropriately registered, manages, or conducts as manager, proprietor, or agent, any place of business from which civil,

electrical, or mechanical engineering work is solicited, performed, or practiced.

(h) Who uses the title, or any combination of that title, of "professional engineer," "licensed engineer," "registered engineer," or the branch titles specified in Section 6732, or the authority titles specified in Section 6763, or "engineer-in-training," or who makes use of any abbreviation of that title which might lead to the belief that he or she is a registered engineer, without being registered as required by this chapter.

(i) Who uses the title "consulting engineer" without being registered as required by this chapter or without being authorized to use that title pursuant to legislation enacted at the 1963, 1965 or 1968 Regular Session.

(j) Who violates any provision of this chapter.

SEC. 12. Section 8706 of the Business and Professions Code is amended to read:

8706. "Board" refers to the Board for Professional Engineers and Land Surveyors.

SEC. 13. Section 8710 of the Business and Professions Code is amended to read:

8710. The Board for Professional Engineers and Land Surveyors is vested with power to administer the provisions and requirements of this chapter, and may make and enforce rules and regulations that are reasonably necessary to carry out its provisions.

This section shall become inoperative on July 1, 2000, and, as of January 1, 2001, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2001, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section shall render the board subject to the review required by Division 1.2 (commencing with Section 473). However, the review of this board shall be limited to only those unresolved issues identified by the Joint Legislative Sunset Review Committee.

SEC. 14. Section 26509 of the Government Code is amended to read:

26509. (a) Notwithstanding any other provision of law, including any provision making records confidential, and including Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code, the district attorney shall be given access to, and may make copies of, any complaint against a person subject to regulation by a consumer-oriented state agency and any investigation of the person made by the agency, where that person is being investigated by the district attorney regarding possible consumer fraud.

(b) Where the district attorney does not take action with respect to the complaint or investigation, the material shall remain confidential.

(c) Where the release of the material would jeopardize an investigation or other duties of a consumer-oriented state agency, the agency shall have discretion to delay the release of the information.

(d) As used in this section, a consumer-oriented state agency is any state agency that regulates the licensure, certification, or qualification of persons to practice a profession or business within the state, where the regulation is for the protection of consumers who deal with the professionals or businesses. It includes, but is not limited to, all of the following:

(1) The Board of Dental Examiners of California.
(2) The Medical Board of California.
(3) The State Board of Optometry.
(4) The California State Board of Pharmacy.
(5) The Veterinary Medical Board.
(6) The State Board of Accountancy.
(7) The California State Board of Architectural Examiners.
(8) The State Board of Barbering and Cosmetology.
(9) The Board for Professional Engineers and Land Surveyors.
(10) The Contractors' State License Board.
(11) The State Board of Funeral Directors and Embalmers.
(12) The Structural Pest Control Board.
(13) The Bureau of Home Furnishings and Thermal Insulation.
(14) The Board of Registered Nursing.
(15) The State Board of Fabric Care.
(16) The Board of Chiropractic Examiners.
(17) The Board of Behavioral Science Examiners.
(18) The State Athletic Commission.
(19) The Cemetery Board.
(20) The State Board of Guide Dogs for the Blind.
(21) The Bureau of Collection and Investigative Services.
(22) The Court Reporters Board of California.
(23) The Board of Vocational Nurse and Psychiatric Technician Examiners of the State of California.
(24) The California State Board of Landscape Architects.
(25) The Osteopathic Medical Board of California.
(26) The Division of Investigation.
(27) The Bureau of Automotive Repair.
(28) The State Board of Registration for Geologists and Geophysicists.
(29) The State Board of Nursing Home Administrators.
(30) The Department of Alcoholic Beverage Control.
(31) The Department of Insurance.
(32) The Public Utilities Commission.
(33) The State Department of Health Services.
(34) The New Motor Vehicle Board.

SEC. 15. Section 25208.9 of the Health and Safety Code is amended to read:

25208.9. (a) Notwithstanding Section 25189, any person who is required to file a hydrogeological assessment report with a regional board pursuant to Section 25208.7, and who fails to do so, shall be liable civilly in a sum of not less than one thousand dollars ($1,000)

and not more than ten thousand dollars ($10,000) for each day the report has not been received.

(b) Notwithstanding Section 25189, any person who submits false information to the regional board shall be liable civilly in a sum of not less than two thousand dollars ($2,000) and not more than twenty-five thousand dollars ($25,000) for each day the false information goes uncorrected.

(c) In determining the amount of civil liability imposed pursuant to this section, the court shall consider all relevant circumstances, including, but not limited to, the extent of harm or potential harm caused by the violation, the nature of the violation and the period of time over which it occurred, the frequency of past violations, and the corrective action, if any, taken by the person.

(d) A regional board shall submit any report that contains false information to the State Board for Geologists and Geophysicists for the purpose of disciplinary action pursuant to Section 7860 of the Business and Professions Code or to the Board for Professional Engineers and Land Surveyors for the purpose of taking disciplinary action pursuant to Section 6775 of the Business and Professions Code, as appropriate.

CHAPTER 60

An act to amend Section 51745.6 of the Education Code, relating to education.

[Approved by Governor June 4, 1998. Filed with Secretary of State June 5, 1998.]

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

SECTION 1. Section 51745.6 of the Education Code is amended to read:

51745.6. (a) The ratio of average daily attendance for independent study pupils 18 years of age or less to school district full-time equivalent certificated employees responsible for independent study, calculated as specified by the State Department of Education, shall not exceed the equivalent ratio of pupils to full-time certificated employees for all other education programs operated by the school district. The ratio of average daily attendance for independent study pupils 18 years of age or less to county office of education full-time equivalent certificated employees responsible for independent study, to be calculated in a manner prescribed by the State Department of Education, shall not exceed the equivalent ratio of pupils to full-time certificated employees for all other educational programs operated by the high school or unified school district with the largest average daily attendance of pupils in that

county. The computation of those ratios shall be performed annually by the reporting agency at the time of, and in connection with, the second principal apportionment report to the Superintendent of Public Instruction.

(b) Only those units of average daily attendance for independent study that reflect a pupil-teacher ratio that does not exceed the ratio described in subdivision (a) shall be eligible for apportionment pursuant to Section 42238.5, for school districts, and Section 2558, for county offices of education. Nothing in this section shall prevent a school district or county office of education from serving additional units of average daily attendance greater than the ratio described in subdivision (a), except that those additional units shall not be funded pursuant to Section 42238.5 or Section 2558.

(c) The calculations performed for purposes of this section shall not include either of the following:

(1) The average daily attendance generated by special education pupils enrolled in special day classes on a full-time basis, or the teachers of those classes.

(2) The average daily attendance or teachers in necessary small schools that are eligible to receive funding pursuant to Article 4 (commencing with Section 42280) of Chapter 7 of Part 24.

(d) The pupil-teacher ratio described in subdivision (a) in a unified school district participating in the class size reduction program pursuant to Chapter 6.10 (commencing with Section 52120) may, at the school district's option, be calculated separately for kindergarten and grades 1 to 6, inclusive, and for grades 7 to 12, inclusive.

CHAPTER 61

An act to amend Sections 1048.1 and 1050 of the Penal Code, relating to criminal procedure.

[Approved by Governor June 4, 1998. Filed with Secretary of State June 5, 1998.]

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

SECTION 1. Section 1048.1 of the Penal Code is amended to read:

1048.1. In scheduling a trial date at an arraignment in superior court involving murder, as defined in subdivision (a) of Section 187, an alleged sexual assault offense, as described in subdivisions (a) and (b) of Section 11165.1, or an alleged child abuse offense, as described in Section 11165.6, reasonable efforts shall be made to avoid setting that trial, as assigned to a particular prosecuting attorney, on the same day that another trial is set involving the same prosecuting attorney.

SEC. 2. Section 1050 of the Penal Code is amended to read:

1050. (a) The welfare of the people of the State of California requires that all proceedings in criminal cases shall be set for trial and heard and determined at the earliest possible time. To this end the Legislature finds that the criminal courts are becoming increasingly congested with resulting adverse consequences to the welfare of the people and the defendant. Excessive continuances contribute substantially to this congestion and cause substantial hardship to victims and other witnesses. Continuances also lead to longer periods of presentence confinement for those defendants in custody and the concomitant overcrowding and increased expenses of local jails. It is therefore recognized that the people, the defendant, and the victims and other witnesses have the right to an expeditious disposition, and to that end it shall be the duty of all courts and judicial officers and of all counsel, both for the prosecution and the defense, to expedite these proceedings to the greatest degree that is consistent with the ends of justice. In accordance with this policy, criminal cases shall be given precedence over, and set for trial and heard without regard to the pendency of, any civil matters or proceedings.

(b) To continue any hearing in a criminal proceeding, including the trial, (1) a written notice shall be filed and served on all parties to the proceeding at least two court days before the hearing sought to be continued, together with affidavits or declarations detailing specific facts showing that a continuance is necessary; and (2), within two court days of learning that he or she has a conflict in the scheduling of any court hearing, including a trial, an attorney shall notify the calendar clerk of each court involved, in writing, indicating which hearing was set first. A party shall not be deemed to have been served within the meaning of this section until that party actually has received a copy of the documents to be served, unless the party, after receiving actual notice of the request for continuance, waives the right to have the documents served in a timely manner. Regardless of the proponent of the motion, the prosecuting attorney shall notify the people's witnesses and the defense attorney shall notify the defense's witnesses of the notice of motion, the date of the hearing, and the witnesses' right to be heard by the court. The superior and municipal courts of a county may adopt rules, which shall be consistent, regarding the method of giving the notice or waiver of service required by this subdivision, where a continuance is sought because of a conflict between scheduled appearances in the courts of that county.

(c) Notwithstanding subdivision (b), a party may make a motion for a continuance without complying with the requirements of that subdivision. However, unless the moving party shows good cause for the failure to comply with those requirements, the court may impose sanctions as provided in Section 1050.5.

(d) When a party makes a motion for a continuance without complying with the requirements of subdivision (b), the court shall

hold a hearing on whether there is good cause for the failure to comply with those requirements. At the conclusion of the hearing the court shall make a finding whether good cause has been shown and, if it finds that there is good cause, shall state on the record the facts proved that justify its finding. A statement of the finding and a statement of facts proved shall be entered in the minutes. If the moving party is unable to show good cause for the failure to give notice, the motion for continuance shall not be granted.

(e) Continuances shall be granted only upon a showing of good cause. Neither the convenience of the parties nor a stipulation of the parties is in and of itself good cause.

(f) At the conclusion of the motion for continuance, the court shall make a finding whether good cause has been shown and, if it finds that there is good cause, shall state on the record the facts proved that justify its finding. A statement of facts proved shall be entered in the minutes.

(g) When deciding whether or not good cause for a continuance has been shown, the court shall consider the general convenience and prior commitments of all witnesses, including peace officers. Both the general convenience and prior commitments of each witness also shall be considered in selecting a continuance date if the motion is granted. The facts as to inconvenience or prior commitments may be offered by the witness or by a party to the case.

For purposes of this section, "good cause" includes, but is not limited to, those cases involving murder, as defined in subdivision (a) of Section 187, allegations that a violation of one or more of the sections specified in subdivision (a) of Section 11165.1 or Section 11165.6, or domestic violence as defined in Section 13700, has occurred and the prosecuting attorney assigned to the case has another trial, preliminary hearing, or motion to suppress in progress in that court or another court. A continuance under this paragraph shall be limited to a maximum of 10 additional court days.

(h) Upon a showing that the attorney of record at the time of the defendant's first appearance in the superior court is a Member of the Legislature of this state and that the Legislature is in session or that a legislative interim committee of which the attorney is a duly appointed member is meeting or is to meet within the next seven days, the defendant shall be entitled to a reasonable continuance not to exceed 30 days.

(i) A continuance shall be granted only for that period of time shown to be necessary by the evidence considered at the hearing on the motion. Whenever any continuance is granted, the court shall state on the record the facts proved that justify the length of the continuance, and those facts shall be entered in the minutes.

(j) Whenever it shall appear that any court may be required, because of the condition of its calendar, to dismiss an action pursuant to Section 1382, the court must immediately notify the Chairman of the Judicial Council.

(k) This section shall not apply when the preliminary examination is set on a date less than 10 court days from the date of the defendant's arraignment on the complaint, and the prosecution or the defendant moves to continue the preliminary examination to a date not more than 10 court days from the date of the defendant's arraignment on the complaint.

CHAPTER 62

An act to add Section 1663 to the Civil Code, relating to contracts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 4, 1998. Filed with Secretary of State June 5, 1998.]

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

SECTION 1. Section 1663 is added to the Civil Code, to read:

1663. (a) As used in this section, the following terms shall have the following meanings:

(1) "Euro" means the currency of participating member states of the European Union that adopt a single currency in accordance with the Treaty on European Union signed February 7, 1992, as amended from time to time.

(2) "Introduction of the euro" includes, but is not limited to, the implementation from time to time of economic and monetary union in member states of the European Union in accordance with the Treaty on European Union signed February 7, 1992, as amended from time to time.

(3) "ECU" or "European Currency Unit" means the currency basket that is from time to time used as the unit of account of the European community, as defined in European Council Regulation No. 3320/94.

(b) If a subject or medium of payment of a contract, security, or instrument is the ECU or a currency that has been substituted or replaced by the euro, the euro shall be a commercially reasonable substitute and substantial equivalent that may be either tendered or used in determining the value of the ECU or currency, in each case at the conversion rate specified in, and otherwise calculated in accordance with, the regulations adopted by the Council of the European Union.

(c) The introduction of the euro, the tendering of euros in connection with any obligation in compliance with subdivision (b), the determining of the value of any obligation in compliance with subdivision (b), or the calculating or determining of the subject or medium of payment of a contract, security, or instrument with reference to an interest rate or other basis that has been substituted

or replaced due to the introduction of the euro and that is a commercially reasonable substitute and substantial equivalent, shall neither have the effect of discharging or excusing performance under any contract, security, or instrument, nor give a party the right unilaterally to alter or terminate any contract, security, or instrument.

(d) This section shall be subject to any agreements between parties with specific reference to, or agreement regarding, the introduction of the euro.

(e) Notwithstanding the Commercial Code or any other law of this state, this section shall apply to all contracts, securities, and instruments, including contracts with respect to commercial transactions, and shall not be deemed to be displaced by any other law of this state.

(f) In the event of other currency changes, the provisions of this section with respect to the euro shall not be interpreted as creating any negative inference or negative presumption regarding the validity or enforceability of contracts, securities, or instruments denominated in whole or part in those other currencies.

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:

On January 1, 1999, the euro, the proposed currency of the European Union, is scheduled to become the currency of the member nations and their individual currencies will cease to exist. International contracts that are expressed in terms of existing national currencies must not become unenforceable or their enforcement delayed because of an assertion of a defense that the designated currencies no longer exist. For these reasons, the amendments to contract law made by this act are required to take effect immediately in order to assure continuity of contract.

CHAPTER 63

An act to amend Sections 87732 and 87734 of the Education Code, relating to education.

[Approved by Governor June 4, 1998. Filed with Secretary of State June 5, 1998.]

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

SECTION 1. (a) The Legislature finds and declares both of the following:

(1) All certificated employees in the California Community Colleges are entitled to due process as it pertains to their job performance.

(2) Job performance is a standard of accountability by which all such employees should be evaluated, and how that standard is defined should be addressed at the local level.

(b) It is, therefore, the intent of the Legislature that:

(1) Provisions of current law as they pertain to due process regarding the dismissal of certificated academic employees of community colleges shall not be altered as a result of this act.

(2) The current procedure of "peer evaluation" as a method of assisting employees to improve their job performance shall not automatically trigger a dismissal process in the case of a poor evaluation.

SEC. 2. Section 87732 of the Education Code is amended to read:

87732. No regular employee or academic employee shall be dismissed except for one or more of the following causes:

(a) Immoral or unprofessional conduct.

(b) Dishonesty.

(c) Unsatisfactory performance.

(d) Evident unfitness for service.

(e) Physical or mental condition that makes him or her unfit to instruct or associate with students.

(f) Persistent violation of, or refusal to obey, the school laws of the state or reasonable regulations prescribed for the government of the community colleges by the board of governors or by the governing board of the community college district employing him or her.

(g) Conviction of a felony or of any crime involving moral turpitude.

(h) Conduct specified in Section 1028 of the Government Code.

SEC. 3. Section 87734 of the Education Code is amended to read:

87734. The governing board of any community college district shall not act upon any charges of unprofessional conduct or unsatisfactory performance unless during the preceding term or half college year prior to the date of the filing of the charge, and at least 90 days prior to the date of the filing, the board or its authorized representative has given the employee against whom the charge is filed, written notice of the unprofessional conduct or unsatisfactory performance, specifying the nature thereof with specific instances of behavior and with particularity as to furnish the employee an opportunity to correct his or her faults and overcome the grounds for the charge. The written notice shall include the evaluation made pursuant to Article 4 (commencing with Section 87660), if applicable to the employee. "Unprofessional conduct" and "unsatisfactory performance," as used in this section, means, and refers only to, the unprofessional conduct and unsatisfactory performance particularly specified as a cause for dismissal in Section 87732 and does not include any other cause for dismissal specified in Section 87732.

SEC. 4. Nothing in this act shall be construed to limit or impair any obligation of, or any rights and duties created by, any contract entered into prior to January 1, 1999.

CHAPTER 64

An act to amend Section 8481 of the Education Code, relating to child care, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 9, 1998. Filed with Secretary of State June 9, 1998.]

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

SECTION 1. Section 8481 of the Education Code is amended to read:

8481. (a) Subject to appropriation in the annual Budget Act, for the purpose of the program in this article, the Superintendent of Public Instruction may allocate funds for the establishment of school-based schoolage before and after school programs that include homework and tutoring assistance, improve literacy skills, and provide recreational activities, as well as facilitate the transition from welfare to work by providing child care for schoolage children and potential employment for welfare recipients who are parents of children enrolled in schoolage child care programs.

(b) A before and after school program, whether public, private, or school district operated, in collaboration with other local governmental agencies, may apply to the State Department of Education for funding under this article. A before and after school program that receives funding pursuant to this article may participate in any other grant programs that fund literacy and technology activities.

(c) In order to achieve the goals of assisting children in learning, providing parents with employment and parenting skills, providing a safe environment for children, and helping prevent crime in neighborhoods, a program funded under this article shall be a collaborative effort with a school district, and may also include collaboration with any combination of the following: other school districts, community college districts, counties, cities, community-based organizations, not-for-profit organizations, the local agency that provides the Even Start Family and Head Start literacy programs or their equivalent programs, and the private sector.

(d) In selecting programs for funding under this article, the department shall use the standards set forth in Section 8463 and all of the following criteria:

(1) Programs shall have demonstrated experience in implementing quality before or after school child development programs.

(2) Programs shall demonstrate the inclusion of a strong literacy component.

(3) Programs shall demonstrate a working collaboration with entities listed in subdivision (c), including Even Start Family and Head Start literacy program providers, to the extent that these programs exist in the service area.

(e) Notwithstanding Section 8468, in allocating funds pursuant to this article, preference shall be given to programs that currently employ recipients of aid under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code, or any successor program, who are parents of children enrolled in the applicant programs or that have a demonstrated commitment to providing employment opportunities for those recipients of aid, or both.

(f) Funding received by a before and after school program pursuant to this article may be renewed and is contingent upon the following:

(1) Compliance with the requirement of subdivision (c), the criteria set forth in subdivision (d), and the priorities set forth in subdivision (e).

(2) A favorable evaluation completed by the State Department of Education pursuant to Section 8498.8 or an evaluation that meets the standards of the department. Outcomes shall include academic achievement determined by measurements such as test scores, grades, school attendance, and number of disciplinary actions.

(3) Programs shall demonstrate that they are receiving locally generated resources from other than federal and state sources, which may include in-kind contributions.

(g) (1) A program established under this section may employ parents of schoolage children who are participating in the program established pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, or any successor program, and may employ those parents in the schools attended by their own children. Parents employed pursuant to this subdivision may also participate in training programs at least six hours per week, in order to help them understand child development, learn parenting skills, and obtain skills for employment in either an educational or child care setting. Employment in the program may fulfill a participant's employment requirements under Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(2) A program shall also be encouraged to hire older siblings of children in the program whose families receive aid under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code, or any successor program, to work in

either the program's literacy or recreation components. It is the intent of this subdivision that hiring teenagers from families that receive aid under this Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code, or any successor program, will provide an additional source of income for these families.

(3) All program participants shall be assessed before they work with children to determine their skills and literacy development and a criminal background check on each participant shall be completed before that participant begins to work with children. Participants shall be supervised by qualified staff.

(4) (A) Notwithstanding any other provision of law, but subject to subparagraph (B), programs operating under this article that use recipients of aid under Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, or any successor program, may count those recipients as staff members for purposes of determining compliance with staffing ratio requirements.

(B) Teenage siblings used by programs operating under this article may not be included in computing compliance with staffing ratio requirements.

(5) Notwithstanding any other provision of law, programs operating under this section may extend their hours of operation beyond 20 hours per week.

(h) A program established pursuant to this section shall assist the children of recipients of aid under Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, or any successor program, and other children to complete homework, improve literacy skills, that shall include, but not be limited to, reading, writing, mathematics, and computer skills, and participate in recreational activities.

(i) Programs funded under this section shall provide training on how to work with children on reading, writing, listening, and speaking. This training shall be provided in collaboration with an Even Start Family or Head Start literacy program, or their equivalent programs.

(j) (1) Notwithstanding any other provision of law, commencing with the 1997–98 fiscal year, schoolsites shall be eligible for the funding of programs established pursuant to this section where a minimum of 70 percent of the children are eligible for free or reduced-cost meals through the school lunch program of the United States Department of Agriculture. Presumptive eligibility for a program established pursuant to this section shall apply to individual families of pupils attending an eligible schoolsite.

(2) Priority for enrollment in programs funded under this section shall be given in accordance with Section 8468.5.

(3) Notwithstanding any other provision of law, parent fees may not be assessed to parents or guardians whose children attend a program established pursuant to this section.

(k) Programs funded under this section shall be encouraged to take advantage of free snack programs administered by the United States Department of Agriculture.

(*l*) It is the intent of this article, by providing a safe, supervised after school environment for children, including those teens employed by a program, to reduce criminal activity among juveniles, and to strengthen parent-child relationships and communities by involving parents in their children's schoolwork and schools.

(m) Notwithstanding Section 8360.1 or any other provision of law, college courses in recreation, art, mathematics, and physical and social development that would enhance the education of schoolage children may be considered to meet course requirements in child development.

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 effectively implement the program changes made by Section 1 of this act to Section 8481 of the Education Code at the earliest possible date so that pupils will have the benefit of those programs, it is necessary that this act take effect immediately.

CHAPTER 65

An act to amend Section 2079.11 of, and to repeal and add Section 1102.6c of, the Civil Code, to amend Sections 8589.5 and 51179 of, and to repeal and add Sections 8589.3, 8589.4, and 51183.5 of, the Government Code, and to amend Sections 2621.9, 2694, 2696, 4125, and 4136 of the Public Resources Code, relating to real estate, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 9, 1998. Filed with Secretary of State June 9, 1998.]

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

SECTION 1. Section 1102.6c of the Civil Code, as added by Chapter 7 of the Statutes of 1997, First Extraordinary Session, is repealed.

SEC. 2. Section 1102.6c is added to the Civil Code, to read:

1102.6c. (a) This section shall apply only to any real property that is subject to one or more of the following:

(1) Section 8589.3 of the Government Code.

(2) Section 8589.4 of the Government Code.

(3) Section 51183.5 of the Government Code.
(4) Section 2621.9 of the Public Resources Code.
(5) Section 2694 of the Public Resources Code.
(6) Section 4136 of the Public Resources Code.

(b) In addition to the disclosure required pursuant to Section 1102.6, the transferor of any real property that is subject to this section, or his or her agent, shall deliver to the prospective transferee the following natural hazard disclosure statement:

NATURAL HAZARD DISCLOSURE STATEMENT

This statement applies to the following property: _____

The seller and his or her agent(s) disclose the following information with the knowledge that even though this is not a warranty, prospective buyers may rely on this information in deciding whether and on what terms to purchase the subject property. Seller hereby authorizes any agent(s) representing any principal(s) in this action to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property.

The following are representations made by the seller and his or her agent(s) based on their knowledge and maps drawn by the state. This information is a disclosure and is not intended to be part of any contract between the buyer and the seller.

THIS REAL PROPERTY LIES WITHIN THE FOLLOWING HAZARDOUS AREA(S):

A SPECIAL FLOOD HAZARD AREA (Any type Zone "A" or "V") designated by the Federal Emergency Management Agency.

Yes _____ No _____ Do not know and information not available from local jurisdiction _____

AN AREA OF POTENTIAL FLOODING shown on a dam failure inundation map pursuant to Section 8589.5 of the Government Code.

Yes _____ No _____ Do not know and information not available from local jurisdiction _____

A VERY HIGH FIRE HAZARD SEVERITY ZONE pursuant to Section 51178 or 51179 of the Government Code. The owner of this property is subject to the maintenance requirements of Section 51182 of the Government Code.

Yes _____ No _____

A WILDLAND AREA THAT MAY CONTAIN SUBSTANTIAL FOREST FIRE RISKS AND HAZARDS pursuant to Section 4125 of the Public Resources Code. The owner of this property is subject to the maintenance requirements of Section 4291 of the Public Resources Code. Additionally, it is not the state's responsibility to provide fire protection services to any building or structure located within the wildlands unless the Department of Forestry and Fire Protection has entered into a cooperative agreement with a local agency for those purposes pursuant to Section 4142 of the Public Resources Code.

AN EARTHQUAKE FAULT ZONE pursuant to Section 2622 of the Public Resources Code.

Yes _____ No _____

A SEISMIC HAZARD ZONE pursuant to Section 2696 of the Public Resources Code.

Yes (Landslide Zone)_____ Yes (Liquefaction Zone) ____
No _____ Map not yet released by state _____

THESE HAZARDS MAY LIMIT YOUR ABILITY TO DEVELOP THE REAL PROPERTY, TO OBTAIN INSURANCE, OR TO RECEIVE ASSISTANCE AFTER A DISASTER.

THE MAPS ON WHICH THESE DISCLOSURES ARE BASED ESTIMATE WHERE NATURAL HAZARDS EXIST. THEY ARE NOT DEFINITIVE INDICATORS OF WHETHER OR NOT A PROPERTY WILL BE AFFECTED BY A NATURAL DISASTER. BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE REGARDING THOSE HAZARDS AND OTHER HAZARDS THAT MAY AFFECT THE PROPERTY.

Seller represents that the information herein is true and correct to the best of the seller's knowledge as of the date signed by the seller.

Signature of Seller _____ Date _____

Agent represents that the information herein is true and correct to the best of the agent's knowledge as of the date signed by the agent.

Signature of Agent _____ Date _____

Signature of Agent _____ Date _____

Buyer represents that he or she has read and understands this document.

Signature of Buyer _____ Date _____

(c) If an earthquake fault zone, seismic hazard zone, very high fire hazard severity zone, or wildland fire area map or accompanying information is not of sufficient accuracy or scale that a reasonable person can determine if the subject real property is included in a natural hazard area, the seller or seller's agent shall mark "Yes" on the Natural Hazard Disclosure Statement. The seller or seller's agent may mark "No" on the Natural Hazard Disclosure Statement if he or she attaches a report prepared pursuant to subdivision (c) of Section 1102.4 that verifies the property is not in the hazard zone. Nothing in this subdivision is intended to limit or abridge any existing duty of the seller or the seller's agents to exercise reasonable care in making a determination under this subdivision.

(d) The disclosure required pursuant to this section may be provided by the seller and seller's agent in the Local Option Real Estate Disclosure Statement provided that the Local Option Real Estate Disclosure Statement includes substantially the same information and substantially the same warning that is required by this section.

(e) The disclosure required pursuant to this section is only a disclosure between the seller, the seller's agents, and the buyer, and

shall not be used by any other party, including, but not limited to, insurance companies, lenders, or governmental agencies, for any purpose.

(f) The specification of items for disclosure in this section does not limit or abridge any obligation for disclosure created by any other provision of law or that may exist in order to avoid fraud, misrepresentation, or deceit in the transfer transaction.

(g) In any transaction in which a seller has accepted, prior to June 1, 1998, an offer to purchase, the seller, or his or her agent, shall be deemed to have complied with the requirement of subdivision (b) if the seller or agent delivers to the prospective transferee a statement that includes substantially the same information and warning as the Natural Hazard Disclosure Statement.

SEC. 3. Section 1102.17 of the Civil Code, as added by Chapter 7 of the Statutes of 1997, First Extraordinary Session, is repealed.

SEC. 4. Section 2079.11 of the Civil Code is amended to read:

2079.11. (a) Except as provided in subdivision (b), to the extent permitted by law, the consumer information publications referred to in this article, including, but not limited to, the information booklets described in Section 10084.1 of the Business and Professions Code and Section 25402.9 of the Public Resources Code, shall be in the public domain and freely available.

(b) Notwithstanding subdivision (a), the Seismic Safety Commission's Homeowner's Guide to Earthquake Safety, published pursuant to Section 10149 of the Business and Professions Code, shall be made available to the public at cost and for reproduction at no cost to any vendor who wishes to publish the guide, provided the vendor agrees to submit the guide to the commission prior to publication for content approval.

SEC. 5. Section 8589.3 is added to the Government Code, to read:

8589.3. (a) A person who is acting as an agent for a seller of real property that is located within a special flood hazard area (any type Zone "A" or "V") designated by the Federal Emergency Management Agency, or the seller if he or she is acting without an agent, shall disclose to any prospective purchaser the fact that the property is located within a special flood hazard area.

(b) In all transactions that are subject to Section 1102 of the Civil Code, the disclosure required by subdivision (a) of this section shall be provided by either of the following means:

(1) The Local Option Real Estate Disclosure Statement as provided in Section 1102.6a of the Civil Code.

(2) The Natural Hazard Disclosure Statement as provided in Section 1102.6c of the Civil Code.

(c) Disclosure is required pursuant to this section only when one of the following conditions is met:

(1) The seller, or the seller's agent, has actual knowledge that the property is within a special flood hazard area.

(2) The local jurisdiction has compiled a list, by parcel, of properties that are within the special flood hazard area and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the parcel list.

(d) For purposes of the disclosure required by this section, the following persons shall not be deemed agents of the seller:

(1) Persons specified in Section 1102.11 of the Civil Code.

(2) Persons acting under a power of sale regulated by Section 2924 of the Civil Code.

(e) Section 1102.13 of the Civil Code shall apply to this section.

(f) The specification of items for disclosure in this section does not limit or abridge any obligation for disclosure created by any other provision of law or that may exist in order to avoid fraud, misrepresentation, or deceit in the transfer transaction.

(g) A notice shall be posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the special flood hazard area map and of any parcel list compiled by the local jurisdiction.

SEC. 6. Section 8589.4 of the Government Code, as added by Chapter 7 of the Statutes of 1997, First Extraordinary Session, is repealed.

SEC. 7. Section 8589.4 is added to the Government Code, to read:

8589.4. (a) A person who is acting as an agent for a seller of real property that is located within an area of potential flooding shown on an inundation map designated pursuant to Section 8589.5, or the seller if he or she is acting without an agent, shall disclose to any prospective purchaser the fact that the property is located within an area of potential flooding.

(b) In all transactions that are subject to Section 1102 of the Civil Code, the disclosure required by subdivision (a) of this section shall be provided by either of the following means:

(1) The Local Option Real Estate Disclosure Statement as provided in Section 1102.6a of the Civil Code.

(2) The Natural Hazard Disclosure Statement as provided in Section 1102.6c of the Civil Code.

(c) Disclosure is required pursuant to this section only when one of the following conditions is met:

(1) The seller, or the seller's agent, has actual knowledge that the property is within an inundation area.

(2) The local jurisdiction has compiled a list, by parcel, of properties that are within the inundation area and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the parcel list.

(d) For purposes of the disclosure required by this section, the following persons shall not be deemed agents of the seller:

(1) Persons specified in Section 1102.11 of the Civil Code.

(2) Persons acting under a power of sale regulated by Section 2924 of the Civil Code.

(e) Section 1102.13 of the Civil Code shall apply to this section.

(f) The specification of items for disclosure in this section does not limit or abridge any obligation for disclosure created by any other provision of law or that may exist in order to avoid fraud, misrepresentation, or deceit in the transfer transaction.

SEC. 8. Section 8589.5 of the Government Code is amended to read:

8589.5. (a) Inundation maps showing the areas of potential flooding in the event of sudden or total failure of any dam, the partial or total failure of which the Office of Emergency Services determines, after consultation with the Department of Water Resources, would result in death or personal injury, shall be prepared and submitted as provided in this subdivision within six months after the effective date of this section, unless the time for submission of those maps is extended for reasonable cause by the Office of Emergency Services. The local governmental organization, utility, or other owner of any dam so designated shall submit to the Office of Emergency Services one map that shall delineate potential flood zones that could result in the event of dam failure when the reservoir is at full capacity, or if the local governmental organization, utility, or other owner of any dam shall determine it to be desirable, he or she shall submit three maps that shall delineate potential flood zones that could result in the event of dam failure when the reservoir is at full capacity, at median-storage level, and at normally low-storage level. After submission of copies of the map or maps, the Office of Emergency Services shall review the map or maps, and shall return any map or maps that do not meet the requirements of this subdivision, together with recommendations relative to conforming to the requirements. Maps rejected by the Office of Emergency Services shall be revised to conform to those recommendations and resubmitted. The Office of Emergency Services shall keep on file those maps that conform to the provisions of this subdivision. Maps approved pursuant to this subdivision shall also be kept on file with the Department of Water Resources. The owner of a dam shall submit final copies of those maps to the Office of Emergency Services that shall immediately submit identical copies to the appropriate public safety agency of any city, county, or city and county likely to be affected.

(b) Based upon a review of inundation maps submitted pursuant to subdivision (a) or based upon information gained by an onsite inspection and consultation with the affected local jurisdiction when the requirement for an inundation map is waived pursuant to subdivision (d), the Office of Emergency Services shall designate areas within which death or personal injury would, in its determination, result from the partial or total failure of a dam. The appropriate public safety agencies of any city, county, or city and

county, the territory of which includes any of those areas, shall adopt emergency procedures for the evacuation and control of populated areas below those dams. The Office of Emergency Services shall review the procedures to determine whether adequate public safety measures exist for the evacuation and control of populated areas below the dams, and shall make recommendations with regard to the adequacy of those procedures to the concerned public safety agency. In conducting the review, the Office of Emergency Services shall consult with appropriate state and local agencies.

Emergency procedures specified in this subdivision shall conform to local needs, and may be required to include any of the following elements or any other appropriate element, in the discretion of the Office of Emergency Services: (1) delineation of the area to be evacuated; (2) routes to be used; (3) traffic control measures; (4) shelters to be activated for the care of the evacuees; (5) methods for the movement of people without their own transportation; (6) identification of particular areas or facilities in the flood zones that will not require evacuation because of their location on high ground or similar circumstances; (7) identification and development of special procedures for the evacuation and care of people from unique institutions; (8) procedures for the perimeter and interior security of the area, including such things as passes, identification requirements, and antilooting patrols; (9) procedures for the lifting of the evacuation and reentry of the area; and (10) details of which organizations are responsible for these functions and the material and personnel resources required. It is the intent of the Legislature to encourage each agency that prepares emergency procedures to establish a procedure for their review every two years.

(c) "Dam," as used in this section, has the same meaning as specified in Sections 6002, 6003, and 6004 of the Water Code.

(d) Under certain exceptional conditions as follows, the Office of Emergency Services may waive the requirement for an inundation map:

(1) Where the effects of potential inundation in terms of death or personal injury, as determined through onsite inspection by the Office of Emergency Services in consultation with the affected local jurisdictions, can be ascertained without an inundation map; and

(2) Where adequate evacuation procedures can be developed without benefit of an inundation map.

(e) If development should occur in any exempted area after a waiver has been granted, the local jurisdiction shall notify the Office of Emergency Services of that development. All waivers shall be reevaluated every two years by the Office of Emergency Services.

(f) A notice shall be posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the map, and of any information received by the county subsequent to the receipt of the map regarding changes to inundation areas within the county.

SEC. 9. Section 51179 of the Government Code is amended to read:

51179. (a) A local agency shall designate, by ordinance, very high fire hazard severity zones in its jurisdiction within 120 days of receiving recommendations from the director pursuant to subdivisions (b) and (c) of Section 51178. A local agency shall be exempt from this requirement if ordinances of the local agency, adopted on or before December 31, 1992, impose standards that are equivalent to, or more restrictive than, the standards imposed by this chapter.

(b) A local agency may, at its discretion, exclude from the requirements of Section 51182 an area identified as a very high fire hazard severity zone by the director within the jurisdiction of the local agency, following a finding supported by substantial evidence in the record that the requirements of Section 51182 are not necessary for effective fire protection within the area.

(c) A local agency may, at its discretion, include areas within the jurisdiction of the local agency, not identified as very high fire hazard severity zones by the director, as very high fire hazard severity zones following a finding supported by substantial evidence in the record that the requirements of Section 51182 are necessary for effective fire protection within the area.

(d) Changes made by a local agency to the recommendations made by the director shall be final and shall not be rebuttable by the director.

(e) The State Fire Marshal shall prepare and adopt a model ordinance that provides for the establishment of very high fire hazard severity zones.

(f) Any ordinance adopted by a local agency pursuant to this section that substantially conforms to the model ordinance of the State Fire Marshal shall be presumed to be in compliance with the requirements of this section.

(g) A local agency shall post a notice at the office of the county recorder, county assessor, and county planning agency identifying the location of the map provided by the director pursuant to Section 51178. If the agency amends the map, pursuant to subdivision (b) or (c) of this section, the notice shall instead identify the location of the amended map.

SEC. 10. Section 51183.5 of the Government Code, as added by Chapter 7 of the Statutes of 1997, First Extraordinary Session, is repealed.

SEC. 11. Section 51183.5 is added to the Government Code, to read:

51183.5. (a) A seller of real property that is located within a very high fire hazard severity zone, designated pursuant to this chapter, shall disclose to any prospective purchaser the fact that the property is located within a very high fire hazard severity zone, and is subject to the requirements of Section 51182.

(b) In all transactions that are subject to Section 1102 of the Civil Code, the disclosure required by subdivision (a) of this section shall be provided by either of the following means:

(1) The Local Option Real Estate Disclosure Statement as provided in Section 1102.6a of the Civil Code.

(2) The Natural Hazard Disclosure Statement as provided in Section 1102.6c of the Civil Code.

(c) Disclosure is required pursuant to this section only when one of the following conditions is met:

(1) The seller, or the seller's agent, has actual knowledge that the property is within a very high fire hazard severity zone.

(2) A map that includes the property has been provided to the local agency pursuant to Section 51178, and a notice is posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the map and any information regarding changes to the map received by the local agency.

(d) If the map or accompanying information is not of sufficient accuracy or scale that a reasonable person can determine if the subject real property is included in a very high fire hazard zone, the seller shall mark "Yes" on the Natural Hazard Disclosure Statement. The seller may mark "No" on the Natural Hazard Disclosure Statement if he or she attaches a report prepared pursuant to subdivision (c) of Section 1102.4 of the Civil Code that verifies the property is not in the hazard zone. Nothing in this subdivision is intended to limit or abridge any existing duty of the seller or the seller's agents to exercise reasonable care in making a determination under this subdivision.

(e) Section 1102.13 of the Civil Code shall apply to this section.

(f) The specification of items for disclosure in this section does not limit or abridge any obligation for disclosure created by any other provision of law or that may exist in order to avoid fraud, misrepresentation, or deceit in the transfer transaction.

SEC. 12. Section 2621.9 of the Public Resources Code is amended to read:

2621.9. (a) A person who is acting as an agent for a seller of real property that is located within a delineated earthquake fault zone, or the seller, if he or she is acting without an agent, shall disclose to any prospective purchaser the fact that the property is located within a delineated earthquake fault zone.

(b) In all transactions that are subject to Section 1102 of the Civil Code, the disclosure required by subdivision (a) of this section shall be provided by either of the following means:

(1) The Local Option Real Estate Transfer Disclosure Statement as provided in Section 1102.6a of the Civil Code.

(2) The Natural Hazard Disclosure Statement as provided in Section 1102.6c of the Civil Code.

(c) Disclosure is required pursuant to this section only when one of the following conditions is met:

(1) The seller, or the seller's agent, has actual knowledge that the property is within a delineated earthquake fault zone.

(2) A map that includes the property has been provided to the city or county pursuant to Section 2622, and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the map and any information regarding changes to the map received by the county.

(d) If the map or accompanying information is not of sufficient accuracy or scale that a reasonable person can determine if the subject real property is included in a delineated earthquake fault hazard zone, the agent shall mark "Yes" on the Natural Hazard Disclosure Statement. The agent may mark "No" on the Natural Hazard Disclosure Statement if he or she attaches a report prepared pursuant to subdivision (c) of Section 1102.4 of the Civil Code that verifies the property is not in the hazard zone. Nothing in this subdivision is intended to limit or abridge any existing duty of the seller or the seller's agents to exercise reasonable care in making a determination under this subdivision.

(e) For purposes of the disclosures required by this section, the following persons shall not be deemed agents of the seller:

(1) Persons specified in Section 1102.11 of the Civil Code.

(2) Persons acting under a power of sale regulated by Section 2924 of the Civil Code.

(f) For purposes of this section, Section 1102.13 of the Civil Code shall apply.

(g) The specification of items for disclosure in this section does not limit or abridge any obligation for disclosure created by any other provision of law or that may exist in order to avoid fraud, misrepresentation, or deceit in the transfer transaction.

SEC. 13. Section 2694 of the Public Resources Code is amended to read:

2694. (a) A person who is acting as an agent for a seller of real property that is located within a seismic hazard zone, as designated under this chapter, or the seller, if he or she is acting without an agent, shall disclose to any prospective purchaser the fact that the property is located within a seismic hazard zone.

(b) In all transactions that are subject to Section 1102 of the Civil Code, the disclosure required by subdivision (a) of this section shall be provided by either of the following means:

(1) The Local Option Real Estate Transfer Disclosure Statement as provided in Section 1102.6a of the Civil Code.

(2) The Natural Hazard Disclosure Statement as provided in Section 1102.6c of the Civil Code.

(c) Disclosure is required pursuant to this section only when one of the following conditions is met:

(1) The seller, or seller's agent, has actual knowledge that the property is within a seismic hazard zone.

(2) A map that includes the property has been provided to the city or county pursuant to Section 2622, and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the map and any information regarding changes to the map received by the county.

(d) If the map or accompanying information is not of sufficient accuracy or scale that a reasonable person can determine if the subject real property is included in a seismic hazard zone, the agent shall mark "Yes" on the Natural Hazard Disclosure Statement. The agent may mark "No" on the Natural Hazard Disclosure Statement if he or she attaches a report prepared pursuant to subdivision (c) of Section 1102.4 of the Civil Code that verifies the property is not in the hazard zone. Nothing in this subdivision is intended to limit or abridge any existing duty of the seller or the seller's agents to exercise reasonable care in making a determination under this subdivision.

(e) For purposes of the disclosures required by this section, the following persons shall not be deemed agents of the seller:

(1) Persons specified in Section 1102.11 of the Civil Code.

(2) Persons acting under a power of sale regulated by Section 2924 of the Civil Code.

(f) For purposes of this section, Section 1102.13 of the Civil Code applies.

(g) The specification of items for disclosure in this section does not limit or abridge any obligation for disclosure created by any other provision of law or that may exist in order to avoid fraud, misrepresentation, or deceit in the transfer transaction.

SEC. 14. Section 2696 of the Public Resources Code is amended to read:

2696. (a) The State Geologist shall compile maps identifying seismic hazard zones, consistent with the requirements of Section 2695. The maps shall be compiled in accordance with a time schedule developed by the director and based upon the provisions of Section 2695 and the level of funding available to implement this chapter.

(b) The State Geologist shall, upon completion, submit seismic hazard maps compiled pursuant to subdivision (a) to the board and all affected cities, counties, and state agencies for review and comment. Concerned jurisdictions and agencies shall submit all comments to the board for review and consideration within 90 days. Within 90 days of board review, the State Geologist shall revise the maps, as appropriate, and shall provide copies of the official maps to each state agency, city, or county, including the county recorder, having jurisdiction over lands containing an area of seismic hazard. The county recorder shall record all information transmitted as part of the public record.

(c) In order to ensure that sellers of real property and their agents are adequately informed, any county that receives an official map pursuant to this section shall post a notice within five days of receipt of the map at the office of the county recorder, county assessor, and

county planning agency, identifying the location of the map, any information regarding changes to the map, and the effective date of the notice.

SEC. 15. Section 4125 of the Public Resources Code is amended to read:

4125. (a) The board shall classify all lands within the state, without regard to any classification of lands made by or for any federal agency or purpose, for the purpose of determining areas in which the financial responsibility of preventing and suppressing fires is primarily the responsibility of the state. The prevention and suppression of fires in all areas that are not so classified is primarily the responsibility of local or federal agencies, as the case may be.

(b) On or before July 1, 1991, and every 5th year thereafter, the department shall provide copies of maps identifying the boundaries of lands classified as state responsibility pursuant to subdivision (a) to the county assessor for every county containing any of those lands. The department shall also notify county assessors of any changes to state responsibility areas within the county resulting from periodic boundary modifications approved by the board.

(c) A notice shall be posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the map, and of any information received by the county subsequent to the receipt of the map regarding changes to state responsibility areas within the county.

SEC. 16. Section 4136 of the Public Resources Code is amended to read:

4136. (a) A seller of real property that is located within a state responsibility area determined by the board, pursuant to Section 4125, shall disclose to any prospective purchaser the fact that the property is located within a wildland area that may contain substantial forest fire risks and hazards and is subject to the requirements of Section 4291.

(b) Except for property located within a county that has assumed responsibility for prevention and suppression of all fires pursuant to Section 4129, the seller shall also disclose to any prospective buyer that it is not the state's responsibility to provide fire protection services to any building or structure located within the wildlands unless the department has entered into a cooperative agreement with a local agency for those purposes pursuant to Section 4142.

(c) In all transactions that are subject to Section 1102 of the Civil Code, the disclosures required by this section shall be provided by either of the following means:

(1) The Local Option Real Estate Disclosure Statement as provided in Section 1102.6a of the Civil Code.

(2) The Natural Hazard Disclosure Statement as provided in Section 1102.6c of the Civil Code.

(d) Disclosure is required pursuant to this section only when one of the following conditions is met:

(1) The seller, or the seller's agent, has actual knowledge that the property is within a wildland fire zone.

(2) A map that includes the property has been provided to the city or county pursuant to Section 4125, and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the map and any information regarding changes to the map received by the county.

(e) If the map or accompanying information is not of sufficient accuracy or scale that a reasonable person can determine if the subject real property is included in a wildland fire zone, the agent shall mark "Yes" on the Natural Hazard Disclosure Statement. The agent may mark "No" on the Natural Hazard Disclosure Statement if he or she attaches a report prepared pursuant to subdivision (c) of Section 1102.4 of the Civil Code that verifies the property is not in the hazard zone. Nothing in this subdivision is intended to limit or abridge any existing duty of the seller or the seller's agents to exercise reasonable care in making a determination under this subdivision.

(f) For purposes of this section, Section 1102.13 of the Civil Code applies.

(g) The specification of items for disclosure in this section does not limit or abridge any obligation for disclosure created by any other provision of law or that may exist in order to avoid fraud, misrepresentation, or deceit in the transfer transaction.

SEC. 17. The Legislature finds and declares that state law requires several different state departments and agencies to conduct natural hazard mapping and information programs, based on their respective scientific and professional competencies. The Legislature finds and declares that city and county planning agencies sometimes have difficulty using the maps and information produced by state departments and agencies regarding natural hazards because the maps may be at different scales, use different projections, or are otherwise incompatible. The Legislature finds and declares that the lack of compatible maps sometimes makes it difficult for city and county planning agencies to make information regarding natural hazards readily available to landowners, their agents, and the public. Therefore, the Legislature finds and declares that there is a need for state officials to coordinate their natural hazard mapping and information programs to make them more effective. The Legislature encourages the Secretary of the Resources Agency to provide coordination and leadership among the state departments and agencies that conduct natural hazard mapping and information programs.

SEC. 18. The provisions of this act shall become operative on June 1, 1998, except that Sections 1, 3, 6, and 10 shall be operative upon the effective date of Chapter 7 of the Statutes of 1997, First Extraordinary Session.

SEC. 19. 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, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 20. It is the intent of the Legislature that the provisions of this act shall supersede the provisions of Chapter 7 of the Statutes of 1997, First Extraordinary Session, in their entirety and, to that intent, the provisions of that chapter shall not become operative.

SEC. 21. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to resolve ambiguity regarding the effective date for important real estate disclosures and to ensure that comprehensive disclosure of information regarding risk of natural disaster hazards is made available to prospective homebuyers, it is necessary that this act take effect immediately.

CHAPTER 66

An act to amend Sections 832.3 and 832.4 of the Penal Code, relating to peace officers.

[Approved by Governor June 17, 1998. Filed with Secretary of State June 18, 1998.]

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

SECTION 1. Section 832.3 of the Penal Code is amended to read:

832.3. (a) Except as provided in subdivisions (b) and (e), any sheriff, undersheriff, or deputy sheriff of a county, any police officer of a city, and any police officer of a district authorized by statute to maintain a police department, who is first employed after January 1, 1975, shall successfully complete a course of training prescribed by the Commission on Peace Officer Standards and Training before exercising the powers of a peace officer, except while participating as a trainee in a supervised field training program approved by the Commission on Peace Officer Standards and Training. Each police chief, or any other person in charge of a local law enforcement agency, appointed on or after January 1, 1999, as a condition of continued employment, shall complete the course of training

pursuant to this subdivision within two years of appointment. The training course for a sheriff, an undersheriff, and a deputy sheriff of a county, and a police chief and a police officer of a city or any other local law enforcement agency shall be the same.

(b) For the purpose of standardizing the training required in subdivision (a), the commission shall develop a training proficiency testing program, including a standardized examination which enables (1) comparisons between presenters of the training and (2) development of a data base for subsequent training programs. Presenters approved by the commission to provide the training required in subdivision (a) shall administer the standardized examination to all graduates. Nothing in this subdivision shall make the completion of the examination a condition of successful completion of the training required in subdivision (a).

(c) Notwithstanding subdivision (c) of Section 84500 of the Education Code and any regulations adopted pursuant thereto, community colleges may give preference in enrollment to employed law enforcement trainees who shall complete training as prescribed by this section. At least 15 percent of each presentation shall consist of nonlaw enforcement trainees if they are available. Preference should only be given when the trainee could not complete the course within the time required by statute, and only when no other training program is reasonably available. Average daily attendance for these courses shall be reported for state aid.

(d) Prior to July 1, 1987, the commission shall make a report to the Legislature on academy proficiency testing scores. This report shall include an evaluation of the correlation between academy proficiency test scores and performance as a peace officer.

(e) (1) Any deputy sheriff described in subdivision (c) of Section 830.1 shall be exempt from the training requirements specified in subdivision (a) as long as his or her assignments remain custodial related.

(2) Deputy sheriffs described in subdivision (c) of Section 830.1 shall complete the training for peace officers pursuant to subdivision (a) of Section 832, and within 120 days after the date of employment, shall complete the training required by the Board of Corrections for custodial personnel pursuant to Section 6035, and the training required for custodial personnel of local detention facilities pursuant to Division 1 (commencing with Section 100) of Title 15 of the California Code of Regulations.

(3) Deputy sheriffs described in subdivision (c) of Section 830.1 shall complete the course of training pursuant to subdivision (a) prior to being reassigned from custodial assignments to duties with responsibility for the prevention and detection of crime and the general enforcement of the criminal laws of this state.

SEC. 2. Section 832.4 of the Penal Code is amended to read:

832.4. (a) Any undersheriff or deputy sheriff of a county, any police officer of a city, and any police officer of a district authorized

by statute to maintain a police department, who is first employed after January 1, 1974, and is responsible for the prevention and detection of crime and the general enforcement of the criminal laws of this state, shall obtain the basic certificate issued by the Commission on Peace Officer Standards and Training within 18 months of his or her employment in order to continue to exercise the powers of a peace officer after the expiration of the 18-month period.

(b) Every peace officer listed in subdivision (a) of Section 830.1, except a sheriff, elected constable, or elected marshal, or a deputy sheriff described in subdivision (c) of Section 830.1, who is employed after January 1, 1988, shall obtain the basic certificate issued by the Commission on Peace Officer Standards and Training upon completion of probation, but in no case later than 24 months after his or her employment, in order to continue to exercise the powers of a peace officer after the expiration of the 24-month period.

Deputy sheriffs described in subdivision (c) of Section 830.1 shall obtain the basic certificate issued by the Commission on Peace Officer Standards and Training within 24 months after being reassigned from custodial duties to general law enforcement duties.

In those cases where the probationary period established by the employing agency is 24 months, the peace officers described in this subdivision may continue to exercise the powers of a peace officer for an additional three-month period to allow for the processing of the certification application.

(c) Each police chief, or any other person in charge of a local law enforcement agency, appointed on or after January 1, 1999, as a condition of continued employment, shall obtain the basic certificate issued by the Commission on Peace Officer Standards and Training within two years of appointment.

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

CHAPTER 67

An act to amend Section 40458 of, and to repeal Section 44243.5 of, the Health and Safety Code, relating to air pollution, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 19, 1998. Filed with Secretary of State June 19, 1998.]

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

SECTION 1. Section 40458 of the Health and Safety Code is amended to read:

40458. (a) Rules 1501 and 1501.1 adopted by the south coast district are void.

(b) Rule 2202 adopted by the south coast district shall be amended in the following manner:

(1) The worksite employee threshold shall be raised to 250.

(2) Nothing in this section is intended to prevent an early replacement and repeal of Rule 2202. The south coast district shall replace Rule 2202 as soon as possible with alternative direct light-duty mobile source emission reduction measures, other than new vehicle emission standards or reformulated fuel standards.

SEC. 2. Section 44243.5 of the Health and Safety Code is repealed.

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 implement necessary modifications to existing rideshare programs at the earliest possible time, thereby improving air quality in the state, it is necessary that this act take effect immediately.

CHAPTER 68

An act to add Sections 1363.01, 1367.20, and 1367.22 to the Health and Safety Code, relating to health care service plans.

[Approved by Governor June 19, 1998. Filed with Secretary of State June 22, 1998.]

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

SECTION 1. Section 1363.01 is added to the Health and Safety Code, to read:

1363.01. (a) Every plan that covers prescription drug benefits shall provide notice in the evidence of coverage and disclosure form

to enrollees regarding whether the plan uses a formulary. The notice shall be in language that is easily understood and in a format that is easy to understand. The notice shall include an explanation of what a formulary is, how the plan determines which prescription drugs are included or excluded, and how often the plan reviews the contents of the formulary.

(b) Every plan that covers prescription drug benefits shall provide to members of the public, upon request, information regarding whether a specific drug or drugs are on the plan's formulary. Notice of the opportunity to secure this information from the plan, including the plan's telephone number for making a request of this nature, shall be included in the evidence of coverage and disclosure form to enrollees.

(c) Every plan shall notify enrollees, and members of the public who request formulary information, that the presence of a drug on the plan's formulary does not guarantee that an enrollee will be prescribed that drug by his or her prescribing provider for a particular medical condition.

SEC. 2. Section 1367.20 is added to the Health and Safety Code, to read:

1367.20. Every health care service plan that provides prescription drug benefits and maintains one or more drug formularies shall provide to members of the public, upon request, a copy of the most current list of prescription drugs on the formulary of the plan by major therapeutic category, with an indication of whether any drugs on the list are preferred over other listed drugs. If the health care service plan maintains more than one formulary, the plan shall notify the requester that a choice of formulary lists is available.

SEC. 3. Section 1367.22 is added to the Health and Safety Code, to read:

1367.22. (a) A health care service plan contract, issued, amended, or renewed on or after July 1, 1999, that covers prescription drug benefits shall not limit or exclude coverage for a drug for an enrollee if the drug previously had been approved for coverage by the plan for a medical condition of the enrollee and the plan's prescribing provider continues to prescribe the drug for the medical condition, provided that the drug is appropriately prescribed and is considered safe and effective for treating the enrollee's medical condition. Nothing in this section shall preclude the prescribing provider from prescribing another drug covered by the plan that is medically appropriate for the enrollee, nor shall anything in this section be construed to prohibit generic drug substitutions as authorized by Section 4073 of the Business and Professions Code. For purposes of this section, a prescribing provider shall include a provider authorized to write a prescription, pursuant to subdivision (a) of Section 4059 of the Business and Professions Code, to treat a medical condition of an enrollee.

(b) This section does not apply to coverage for any drug that is prescribed for a use that is different from the use for which that drug has been approved for marketing by the federal Food and Drug Administration. Coverage for different-use drugs is subject to Section 1367.21.

(c) Nothing in this section shall be construed to restrict or impair the application of any other provision of this chapter, including, but not limited to, Section 1367, which includes among its requirements that plans furnish services in a manner providing continuity of care and demonstrate that medical decisions are rendered by qualified medical providers unhindered by fiscal and administrative management.

(d) Nothing in this section shall prohibit a health care service plan from charging a subscriber or enrollee a copayment or a deductible for prescription drug benefits or from setting forth, by contract, limitations on maximum coverage of prescription drug benefits, provided that the copayments, deductibles, or limitations are reported to, and held unobjectionable by, the commissioner and set forth to the subscriber or enrollee pursuant to the disclosure provisions of Section 1363.

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 that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 69

An act to add Sections 1367.20 and 1367.24 to the Health and Safety Code, relating to health care service plans.

[Approved by Governor June 19, 1998. Filed with Secretary of State June 22, 1998.]

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

SECTION 1. Section 1367.20 is added to the Health and Safety Code, to read:

1367.20. Every health care service plan that provides prescription drug benefits and maintains one or more drug formularies shall

provide to members of the public, upon request, a copy of the most current list of prescription drugs on the formulary of the plan by major therapeutic category, with an indication of whether any drugs on the list are preferred over other listed drugs. If the health care service plan maintains more than one formulary, the plan shall notify the requester that a choice of formulary lists is available.

SEC. 2. Section 1367.24 is added to the Health and Safety Code, to read:

1367.24. (a) Every health care service plan that provides prescription drug benefits shall maintain an expeditious process by which prescribing providers may obtain authorization for a medically necessary nonformulary prescription drug. On or before July 1, 1999, every health care service plan that provides prescription drug benefits shall file with the department a description of its process, including timelines, for responding to authorization requests for nonformulary drugs. Any changes to this process shall be filed with the department pursuant to Section 1352. Each plan shall provide a written description of its most current process, including timelines, to its prescribing providers. For purposes of this section, a prescribing provider shall include a provider authorized to write a prescription, pursuant to subdivision (a) of Section 4040 of the Business and Professions Code, to treat a medical condition of an enrollee.

(b) Any plan that disapproves a request made pursuant to subdivision (a) by a prescribing provider to obtain authorization for a nonformulary drug shall provide the reasons for the disapproval in a notice provided to the enrollee. The notice shall indicate that the enrollee may file a grievance with the plan if the enrollee objects to the disapproval, including any alternative drug or treatment offered by the plan. The notice shall comply with subdivision (b) of Section 1368.02.

(c) The process described in subdivision (a) by which prescribing providers may obtain authorization for medically necessary nonformulary drugs shall not apply to a nonformulary drug that has been prescribed for an enrollee in conformance with the provisions of Section 1367.22.

(d) The process described in subdivision (a) by which enrollees may obtain medically necessary nonformulary drugs, including specified timelines for responding to prescribing provider authorization requests, shall be described in evidence of coverage and disclosure forms, as required by subdivision (a) of Section 1363, issued on or after July 1, 1999.

(e) Every health care service plan that provides prescription drug benefits shall maintain, as part of its books and records under Section 1381, all of the following information, which shall be made available to the commissioner upon request:

(1) The complete drug formulary or formularies of the plan, if the plan maintains a formulary, including a list of the prescription drugs

on the formulary of the plan by major therapeutic category with an indication of whether any drugs are preferred over other drugs.

(2) Records developed by the pharmacy and therapeutic committee of the plan, or by others responsible for developing, modifying, and overseeing formularies, including medical groups, individual practice associations, and contracting pharmaceutical benefit management companies, used to guide the drugs prescribed for the enrollees of the plan, that fully describe the reasoning behind formulary decisions.

(3) Any plan arrangements with prescribing providers, medical groups, individual practice associations, pharmacists, contracting pharmaceutical benefit management companies, or other entities that are associated with activities of the plan to encourage formulary compliance or otherwise manage prescription drug benefits.

(f) If a plan provides prescription drug benefits, the department shall, as part of its periodic onsite medical survey of each plan undertaken pursuant to Section 1380, review the performance of the plan in providing those benefits, including, but not limited to, a review of the procedures and information maintained pursuant to this section , and describe the performance of the plan as part of its report issued pursuant to Section 1380.

(g) The commissioner shall not publicly disclose any information reviewed pursuant to this section that is determined by the commissioner to be confidential pursuant to state law.

(h) Nothing in this section shall be construed to restrict or impair the application of any other provision of this chapter, including, but not limited to, Section 1367, which includes among its requirements that a health care service plan furnish services in a manner providing continuity of care and demonstrate that medical decisions are rendered by qualified medical providers unhindered by fiscal and administrative management. Subdivision (c) of Section 1367.24, which establishes an exemption if a drug has been prescribed in conformance with Section 1367.22, shall have no effect unless Section 1367.22 of the Health and Safety Code, as added by Assembly Bill 974 of the 1997–98 Regular Session, takes effect on or before July 1, 1999.

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 that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative

on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 70

An act to amend, repeal, and add Section 115825 of, and to add and repeal Section 115840.5 of, the Health and Safety Code, relating to public health.

[Approved by Governor June 19, 1998. Filed with Secretary of State June 22, 1998.]

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

SECTION 1. Section 115825 of the Health and Safety Code is amended to read:

115825. (a) It is hereby declared to be the policy of this state that multiple use should be made of all public water within the state, to the extent that multiple use is consistent with public health and public safety.

(b) Except as provided in Sections 115840, 115840.5, and 115841, recreational uses shall not, with respect to a reservoir in which water is stored for domestic use, include recreation in which there is bodily contact with the water by any participant.

(c) This section shall remain in effect only 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. 2. Section 115825 is added to the Health and Safety Code, to read:

115825. (a) It is hereby declared to be the policy of this state that multiple use should be made of all public water within the state, to the extent that multiple use is consistent with public health and public safety.

(b) Except as provided in Sections 115840 and 115841, recreational uses shall not, with respect to a reservoir in which water is stored for domestic use, include recreation in which there is bodily contact with the water by any participant.

(c) This section shall become operative on January 1, 2004.

SEC. 3. Section 115840.5 is added to the Health and Safety Code, to read:

115840.5. (a) In the Modesto Reservoir, recreational uses shall not include recreation in which any participant has bodily contact with the water, unless both of the following conditions are satisfied:

(1) The water subsequently receives complete water treatment, in compliance with all applicable department regulations, including coagulation, flocculation, sedimentation, filtration, and disinfection,

before being used for domestic purposes. The disinfection shall include, but not be limited to, ozonation.

(2) The reservoir is operated in compliance with regulations of the department.

(b) The recreational use may be subject to additional conditions and restrictions adopted by the entity operating the water supply reservoir, if those conditions and restrictions do not conflict with regulations of the department, and are designed to further protect or enhance the public health and safety.

(c) The Modesto Irrigation District shall file, on or before January 1, 2002, with the Legislature, a report on the recreational uses at Modesto Reservoir and the water treatment program. The report shall include, but not be limited to, all of the following information:

(1) The estimated levels and types of recreational uses at the reservoir on a monthly basis.

(2) Levels of methyl tertiary butyl ether at various reservoir locations on a monthly basis.

(3) A summary of available monitoring in the Modesto Reservoir watershed for giardia and cryptosporidium.

(4) The sanitary survey of the watershed and water quality monitoring plan.

(5) An evaluation of recommendations relating to removal and inactivation of cryptosporidium and giardia as specified in the department water permit dated October 28, 1997.

(6) Annual reports provided to the department, as required pursuant to Sections I and IV of the department water permit dated October 28, 1997.

(7) An evaluation of the impact on source water quality due to recreational activities on the Modesto Reservoir, including any microbiological monitoring.

(8) A summary of any activities between the district and the county for operation of recreational uses and facilities in a manner that optimizes the water quality.

(9) The reservoir management plan and the operations plan.

(10) The annual water quality reports submitted to consumers each year.

(d) This section shall remain in effect only 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. 4. (a) The Legislature finds and declares that Section 3, which is applicable only to the Modesto Reservoir, is necessary because of the unique circumstances whereby recreational activities have continued at the reservoir while the Modesto Irrigation District has constructed a water treatment facility that has been authorized by the State Department of Health Services despite the requirements of Section 115825, and that the district will provide information to the Legislature regarding certain issues to ensure that continued recreational uses at the reservoir do not affect the

provision of domestic water to Modesto. It is therefore declared that a general law within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution cannot be made applicable, and that the enactment of this special law is necessary for recreation uses to continue at Modesto Reservoir during the study and reporting period.

(b) This section shall remain in effect only 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.

CHAPTER 71

An act to amend Sections 14105.98 and 14163 of the Welfare and Institutions Code, relating to health, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 25, 1998. Filed with Secretary of State June 25, 1998.]

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

SECTION 1. Section 14105.98 of the Welfare and Institutions Code is amended to read:

14105.98. (a) The following definitions shall apply for purposes of this section:

(1) "Disproportionate share list" means an annual list of disproportionate share hospitals that provide acute inpatient services issued by the department for purposes of this section.

(2) "Fund" means the Medi-Cal Inpatient Payment Adjustment Fund, created pursuant to Section 14163.

(3) "Eligible hospital" means a hospital included on a disproportionate share list, which is eligible to receive payment adjustments under this section with respect to a particular state fiscal year.

(4) "Hospital" means a health facility that is licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code to provide acute inpatient hospital services, and includes all components of the facility.

(5) "Payment adjustment" or "payment adjustment amount" means an amount paid under this section for acute inpatient hospital services provided by a disproportionate share hospital.

(6) "Payment adjustment year" means the particular state fiscal year with respect to which payments are to be made to eligible hospitals under this section.

(7) "Payment adjustment program" means the system of Medi-Cal payment adjustments for acute inpatient hospital services established by this section.

(8) "Annualized Medi-Cal inpatient paid days" means the total number of Medi-Cal acute inpatient hospital days, regardless of dates of service, for which payment was made by or on behalf of the department to a hospital, under present or previous ownership, during the most recent calendar year ending prior to the beginning of a particular payment adjustment year, including all Medi-Cal acute inpatient covered days of care for hospitals which are paid on a different basis than per diem payments.

(9) "Low-income utilization rate" means a percentage rate determined by the department in accordance with the requirements of Section 1396r-4(b)(3) of Title 42 of the United States Code, and included on a disproportionate share list.

(10) "Low-income number" means a hospital's low-income utilization rate rounded down to the nearest whole number, and included on a disproportionate share list.

(11) "1991 Peer Grouping Report" means the final report issued by the department dated May 1991, entitled "Hospital Peer Grouping."

(12) "Major teaching hospital" means a hospital that meets the definition of a university teaching hospital, major nonuniversity teaching hospital, or large teaching emphasis hospital as set forth on page 51 of the 1991 Peer Grouping Report.

(13) "Children's hospital" means a hospital that meets the definition of a children's hospital—state defined, as set forth on page 53 of the 1991 Peer Grouping Report, or which is listed in subdivision (a), or subdivisions (c) to (g), inclusive, of Section 16996.

(14) "Acute psychiatric hospital" means a hospital that meets the definition of an acute psychiatric hospital, a combination psychiatric/alcohol-drug rehabilitation hospital, or a psychiatric health facility, to the extent the facility is licensed to provide acute inpatient hospital service, as set forth on page 52 of the 1991 Peer Grouping Report.

(15) "Alcohol-drug rehabilitation hospital" means a hospital that meets the definition of an alcohol-drug rehabilitation hospital as set forth on page 52 of the 1991 Peer Grouping Report.

(16) "Emergency services hospital" means a hospital that is a licensed provider of basic emergency services as described in Sections 70411 to 70419, inclusive, of Title 22 of the California Code of Regulations, or that is a licensed provider of comprehensive emergency medical services as described in Sections 70451 to 70459, inclusive, of Title 22 of the California Code of Regulations.

(17) "Medi-Cal day of acute inpatient hospital service" means any acute inpatient day of service attributable to patients who, for those days, were eligible for medical assistance under the California state plan, including any day of service that is reimbursed on a basis other than per diem payments.

(18) "Total per diem composite amount" means, for each eligible hospital for a particular payment adjustment year, the total of the

various per diem payment adjustment amounts to be paid to the hospital for each eligible day as calculated under the applicable provisions of this section.

(19) "Supplemental lump-sum payment adjustment" means a lump-sum amount paid under this section for acute inpatient hospital services provided by a disproportionate share hospital.

(20) "Projected total payment adjustment amount" means, for each eligible hospital for a particular payment adjustment year, the amount calculated by the department as the projected maximum total amount the hospital is expected to receive under the payment adjustment program for the particular payment adjustment year (including all per diem payment adjustment amounts and any applicable supplemental lump-sum payment adjustments).

(21) "To align the program with the federal allotment" means to modify the size of the payment adjustment program to be as close as reasonably feasible to, but not to exceed, the estimated or actual maximum state disproportionate share hospital allotment for the particular federal fiscal year for California under Section 1396r-4(f) of Title 42 of the United States Code.

(22) "Descending pro rata basis" means an allocation methodology under which a pool of funds is distributed to hospitals on a pro rata basis until one of the recipient hospitals reaches its maximum payment limit, after which all remaining amounts in the pool are distributed on a pro rata basis to the recipient hospitals that have not reached their maximum payment limits, until another hospital reaches its maximum payment limit, and which process is repeated until the entire pool of funds has been distributed among the recipient hospitals.

(23) "Secondary supplemental payment adjustment" means a payment adjustment amount, whether paid or payable, to an eligible hospital as a second type of supplemental distribution earned as of June 30, 1996, with respect to the 1995–96 payment adjustment year.

(24) "OBRA 1993 payment limitation" means the hospital-specific limitation on the total annual amount of payment adjustments to each eligible hospital under the payment adjustment program that can be made with federal financial participation under Section 1396r-4(g) of Title 42 of the United States Code, as implemented pursuant to the Medi-Cal State Plan.

(25) "Public hospital" means a hospital that is licensed to a county, a city, a city and county, the State of California, the University of California, a local health care district, a local health authority, or any other political subdivision of the state.

(26) "Nonpublic hospital" means a hospital that satisfies all of the following:

(A) The hospital does not meet the definition of a public hospital as described in paragraph (25).

(B) The hospital does not meet the definition of a nonpublic-converted hospital as described in paragraph (27).

(C) The hospital does not meet the definition of a converted hospital as described in paragraph (28).

(27) "Nonpublic-converted hospital" means a hospital that satisfies all of the following:

(A) The hospital does not meet the definition of a public hospital as described in paragraph (25).

(B) The hospital, at any time during the 1994–95 payment adjustment year, was a public hospital as described in paragraph (25), whether or not the hospital currently is located at the same site as it was located when it was a public hospital.

(C) The hospital does not meet the definition of a converted hospital as described in paragraph (28).

(28) "Converted hospital" means a hospital that satisfies both of the following:

(A) The hospital does not meet the definition of a public hospital as described in paragraph (25).

(B) The hospital, at any time during the 1997–98 payment adjustment year, was a public hospital as described in paragraph (25), whether or not the hospital currently is located at the same site as it was located when it was a public hospital.

(29) "Remained in operation" or "remains in operation" means that, except for closure or other cessation of services caused by natural disasters or other events beyond the hospital's reasonable control, including labor disputes, the hospital was licensed to provide hospital inpatient services, and continued to provide, or was available to provide, hospital inpatient services to Medi-Cal patients throughout the particular time period in question.

(30) "Maximum state disproportionate share hospital allotment for California" means, with respect to the 1998 federal fiscal year and subsequent federal fiscal years, that amount specified for California under Section 1396r-4(f) of Title 42 of the United State Code for that fiscal year, divided by the federal medical assistance percentage applicable for federal financial participation purposes for Medi-Cal program expenditures with respect to that same federal fiscal year.

(b) For each fiscal year commencing with 1991–92, there shall be Medi-Cal payment adjustment amounts paid to hospitals pursuant to this section. The amount of payments made and the eligible hospitals for each payment adjustment year shall be determined in accordance with the provisions of this section. The payments are intended to support health care services rendered by disproportionate share hospitals.

(c) For each fiscal year commencing with 1991–92, the department shall issue a disproportionate share list. The list shall be developed in accordance with subdivisions (e) and (f), and shall serve as a basis for payments under this section for the particular payment adjustment year.

(d) (1) Except as otherwise provided by this section, the payment adjustment amounts under this section shall be distributed

as a supplement to, and concurrent with, payments on all billings for Medi-Cal acute inpatient hospital services that are paid through Medi-Cal claims payment systems on or after July 1, 1991. In connection with those billings, the department shall pay payment adjustment amounts in accordance with subdivision (g), (h), (i), or (j), as applicable, to any hospital qualifying under subdivision (e). In addition, the department shall pay to each of those hospitals any supplemental lump-sum payment adjustment amounts that are payable, and shall adjust payment amounts, in accordance with applicable provisions of this section. The nonfederal share of all payment adjustment amounts shall be funded by amounts from the fund. The department shall obtain federal matching funds for the payment adjustment program through customary Medi-Cal accounting procedures.

(2) As a limitation to paragraph (1), all payment adjustment amounts under this section, which are due with respect to billings paid through Medi-Cal claims payment systems on or after July 1, 1991, shall be suspended until the time federal approval is first obtained for the payment adjustment program as part of the Medi-Cal program. For purposes of this paragraph, federal approval requires both (i) approval by appropriate federal agencies of an amendment to the Medi-Cal State Plan, as referred to in subdivision (o), and (ii) confirmation by appropriate federal agencies regarding the availability of federal financial participation for the payment adjustment program at a level of at least 40 percent of the percentage of federal financial participation that is normally applicable for Medi-Cal expenditures for acute inpatient hospital services. At the time federal approval is first obtained, the department shall proceed pursuant to subparagraphs (A) and (B) in connection with the suspended payment adjustment amounts.

(A) Except as provided by subdivision (*l*), or by any other subdivision of this section, any payment adjustment amounts which were suspended shall, within 60 days, be paid for all those billings paid through Medi-Cal claims payment systems during periods of time, on or after July 1, 1991, for which federal approval is first effective for the payment adjustment program.

(B) Payment adjustment amounts shall not be paid in connection with any Medi-Cal billings which were paid through Medi-Cal claims payment systems during any period of time for which federal approval is not effective for the payment adjustment program.

(3) As a limitation to paragraph (1), the amendments to this section enacted during calendar year 1993 shall not be implemented until the department has obtained any approvals that are necessary under federal law. Until such time as all necessary federal approvals are obtained, the payment adjustment program shall continue as though no amendments had been enacted during calendar year 1993. At such time as all necessary federal approvals have been obtained, the amendments enacted during calendar year 1993, shall be

implemented effective as of the earliest effective date permissible under federal law.

(4) As a limitation to paragraph (1), amendments to this section enacted during calendar year 1994 shall not be implemented until the department has obtained any approvals that are necessary under federal law. Until all necessary federal approvals are obtained, the payment adjustment program shall continue as though no amendments had been enacted during calendar year 1994. When all necessary federal approvals have been obtained, the amendments enacted during calendar year 1994 shall be implemented effective as of the earliest effective date permissible under federal law. Notwithstanding any other provision of law, on or after the date that federal approval is obtained the payments made prior to that date with respect to the 1994–95 payment adjustment year or subsequent payment adjustment years shall be deemed nonfinal payments for purposes of this section and Section 14163. Any of those amounts paid or payable prior to that date shall then be compared to the payments that would have been made pursuant to the program changes as approved by the federal government for all periods of time permissible under federal law, and the difference, if any, shall be paid or recouped by the department, as appropriate.

(5) As a limitation to paragraph (1), amendments to this section enacted during June 1996 shall not be implemented until the department has obtained any approvals that are necessary under federal law. Until all necessary federal approvals are obtained, the payment adjustment program shall continue as though no amendments had been enacted during June 1996. When all necessary federal approvals have been obtained, the amendments enacted during June 1996 shall be implemented effective as of the earliest effective date permissible under federal law. Notwithstanding any other provision of law, on or after the date that federal approval is obtained, the payments made prior to that date with respect to the 1995–96 payment adjustment year shall be deemed nonfinal payments for purposes of this section and Section 14163. Any of those amounts paid or payable prior to that date shall then be compared to the payments that would have been made pursuant to the program changes as approved by the federal government for all periods of time permissible under federal law, and the difference, if any, shall be paid or recouped by the department, as appropriate.

(6) As a limitation to paragraph (1), any amendment of this section enacted during the period August 1, 1996, to September 30, 1996, inclusive, shall not be implemented until the department has obtained any approvals that are necessary under federal law. Until all necessary federal approvals are obtained, the payment adjustment program shall continue as though no amendments had been enacted during the period August 1, 1996, to September 30, 1996, inclusive. When all necessary federal approvals have been obtained, the amendments enacted during the period August 1, 1996, to September

30, 1996, inclusive, shall be implemented effective as of the earliest effective date permissible under federal law. Notwithstanding any other provision of law, on or after the date that federal approval is obtained, the payments made prior to that date with respect to the 1996–97 payment adjustment year shall be deemed nonfinal payments for purposes of this section and Section 14163. Any of those amounts paid or payable prior to that date shall then be compared to the payments that would have been made pursuant to the program changes as approved by the federal government for all periods of time permissible under federal law, and the difference, if any, shall be paid or recouped by the department, as appropriate.

(7) As a limitation to paragraph (1), any amendment of this section enacted during the period September 1, 1997 to September 30, 1997, inclusive, shall not be implemented until the department has obtained any approvals that are appropriate under federal law. Until appropriate federal approvals are obtained, the payment adjustment program shall continue as though amendments had not been enacted during the period September 1, 1997 to September 30, 1997, inclusive. When appropriate federal approvals have been obtained, the amendments enacted during the period September 1, 1997 to September 30, 1997, inclusive, shall be implemented effective as of the earliest effective date permissible under federal law. Notwithstanding any other provision of law, on or after the date that federal approval is obtained, the payments made prior to that date with respect to the 1997–98 payment adjustment year shall be deemed nonfinal payments for purposes of this section and Section 14163. Any of those amounts paid or payable prior to that date shall then be compared to the payments that would have been made pursuant to the program changes as approved by the federal government for all periods of time permissible under federal law, and the difference, if any, shall be paid or recouped by the department, as appropriate.

(8) As a limitation to paragraph (1), any amendment of this section enacted during the 1998 calendar year shall not be implemented until the department has obtained any approvals that are appropriate under federal law. Until appropriate federal approvals are obtained, the payment adjustment program shall continue as though amendments had not been enacted during the 1998 calendar year. When appropriate federal approvals have been obtained, the amendments enacted during the 1998 calendar year shall be implemented effective as of the earliest effective date permissible under federal law. Notwithstanding any other provision of law, on or after the date that federal approval is obtained, the payments made prior to that date with respect to the particular payment adjustment year shall be deemed nonfinal payments for purposes of this section and Section 14163. Any of those amounts paid or payable prior to that date shall then be compared to the payments that would have been made pursuant to the program changes as

approved by the federal government for all periods of time permissible under federal law, and the difference, if any, shall be paid or recouped by the department, as appropriate.

(e) To qualify for payment adjustment amounts under this section, a hospital shall have been included on the disproportionate share list for the particular payment adjustment year. The list shall consist of those hospitals which satisfy both of the following requirements:

(1) The hospital shall meet the federal requirements for disproportionate share status set forth in subsection (d) of Section 1396r-4 of Title 42 of the United States Code.

(2) Either of the following shall apply:

(A) The hospital's medicaid inpatient utilization rate, as defined in Section 1396r-4(b)(2) of Title 42 of the United States Code, shall be at least one standard deviation above the mean medicaid inpatient utilization rate for hospitals receiving medicaid payments in the state.

(B) The hospital's low-income utilization rate shall exceed 25 percent.

(f) (1) For the 1991–92 payment adjustment year, a disproportionate share list shall be issued by the department no later than 65 days after the enactment of this section. For subsequent payment adjustment years, a tentative listing shall be prepared by the department at least 60 days before the beginning of the particular payment adjustment year, and a disproportionate share list shall be issued no later than five days after the beginning of the particular payment adjustment year. All state agencies shall take all necessary steps to supply the most recent data available to the department to meet these deadlines. The Office of Statewide Health Planning and Development shall provide to the department quarterly access to the edited and unedited confidential patient discharge data files for all Medi-Cal eligible patients. The department shall maintain the confidentiality of that data to the same extent as is required of the Office of Statewide Health Planning and Development. In addition, the Office of Statewide Health Planning and Development shall provide to the department no later than March 1 of each year, the data specified by the department, as the data existed on the statewide data base file as of February 1 of each year (except that for the 1991–92 payment adjustment year, the Office of Statewide Health Planning and Development shall provide data as it existed on the statewide data base file as of August 30, 1991), from all of the following:

(A) Hospital annual disclosure reports, filed with the Office of Statewide Health Planning and Development pursuant to Section 443.31 or 128735 of the Health and Safety Code, for hospital fiscal years which ended during the calendar year ending 13 months prior to the applicable February 1.

(B) Annual reports of hospitals, filed with the Office of Statewide Health Planning and Development pursuant to Section 439.2 or 127285 of the Health and Safety Code, for the calendar year ending 13 months prior to the applicable February 1.

(C) Hospital patient discharge data reports, filed with the Office of Statewide Health Planning and Development pursuant to subdivision (g) of Section 443.31 or 128735 of the Health and Safety Code, for the calendar year ending 13 months prior to the applicable February 1.

(D) Any other materials on file with the Office of Statewide Health Planning and Development.

(2) The disproportionate share list shall show all of the following:

(A) The name and license number of the hospital.

(B) Expressed as a percentage, the hospital's Medi-Cal utilization rate and low-income utilization rate as referred to in paragraph (2) of subdivision (e). The department shall determine these rates in accordance with paragraph (4).

(C) Based on the hospital's low-income utilization rate, the hospital's low-income number.

(3) The department shall determine a hospital's satisfaction of paragraph (1) of subdivision (e) based on the most recent annual data available, as it existed on the Office of Statewide Health Planning and Development statewide data base file as of February 1 of each year, and August 30 for the 1991–92 payment adjustment year, whether the data relates to operations under present or previous ownership.

(4) To determine a hospital's Medi-Cal inpatient utilization rate and low-income utilization rate for purposes of disproportionate share lists, the department shall utilize the same methodology, formulae, and data sources as set forth in connection with interim determinations in Attachment 4.19-A of the Medi-Cal state plan (effective on or about July 1, 1990), and as subsequently amended by Medi-Cal State Plan amendments relating to the payment adjustment program submitted to and approved by the federal Health Care Financing Administration, except that the following shall apply:

(A) The calculations shall not be interim, but shall be final for purposes of this section.

(B) To the extent permitted by federal law, the payment adjustment amounts provided to hospitals pursuant to this section shall not be included for any purpose in the calculations and determinations made pursuant to this section.

(C) Any other variation otherwise required by this section or by federal law.

(D) The data utilized by the department shall relate to the hospital under present and previous ownership. When there has been a change of ownership, a change in the location of the main hospital facility, or a material change in patient admission patterns

during the 24 months immediately prior to the payment adjustment year, and the change has resulted in a diminution of access for Medi-Cal inpatients at the hospital, all as determined by the department, the department shall, to the extent permitted by federal law, utilize current data that are reflective of the diminution of access, even if the data are not annual data.

(E) Unless expressly provided otherwise by this section, the hospital's low-income utilization rate shall be based on the most recent annual data available from annual hospital reports existing on the Office of Statewide Health Planning and Development data base file as of February 1 of each year.

(F) (i) If, for the 1994–95 payment adjustment year, some or all of the annual data elements available to the department from hospital reports filed with the Office of Statewide Health Planning and Development for purposes of computing hospital low-income utilization rates are different than in prior years due to changes in data reporting requirements of the Office of Statewide Health Planning and Development or changes in other state health care programs, the department shall take such steps as are necessary to obtain from hospitals appropriate data in order to clarify the annual data filed with the Office of Statewide Health Planning and Development. This shall be done by the department in order to ensure that low-income utilization rates are determined in a manner as equivalent as possible to the approach and methodology used for the 1991–92 payment adjustment year.

(ii) The efforts of the department to obtain and apply data for the purposes described in clause (i) shall include a survey to collect, from one or more hospitals, any data necessary to calculate the low-income utilization rates in accordance with clause (i). The purpose for the survey shall be to clarify the data already included by hospitals in their annual reports submitted to the Office of Statewide Health Planning and Development. The data requested by the department in the survey may include, among other things, information regarding the manner in which payments made to hospitals under this section were reported by the hospitals to the Office of Statewide Health Planning and Development. The data requested may also include information regarding the manner in which hospitals reported figures relating to charity care, bad debts, and amounts received in connection with state or local indigent care programs.

(iii) In connection with any survey conducted under clause (ii), the department may require that hospitals submit responses in accordance with a deadline established by the department, and that the responses be supported by a verification of a hospital representative. Should any hospital not respond on a timely basis in accordance with protocols established by the department, the department shall utilize prior year data, adjusted by the department in its discretion, to calculate the hospital's low-income utilization rate.

(G) Notwithstanding any other provision of law, all payment adjustment amounts, including per diem payment adjustment amounts and supplemental lump-sum payment adjustments, paid or payable to a hospital under this section, shall be recorded on an accrual basis of accounting in reports filed by the hospital with the Office of Statewide Health Planning and Development or the department.

(5) For purposes of payment adjustment amounts under this section, each disproportionate share list shall be considered complete when issued by the department pursuant to paragraph (1). Nothing on a disproportionate share list, once issued by the department, shall be modified for any reason, other than mathematical or typographical errors or omissions on the part of the department or the Office of Statewide Health Planning and Development in preparation of the list.

(6) No Medi-Cal State Plan amendment of the type referred to in paragraph (4) shall be valid if inconsistent with this section. For those Medi-Cal State Plan amendments of the type referred to in paragraph (4), to be initially submitted to the federal Health Care Financing Administration on or after the operative date of this paragraph, these amendments shall be provided to representatives of the hospital industry, including, but not limited to, the California Healthcare Association, as soon as possible, but in no event less than 30 days prior to submission of the amendment to the federal Health Care Financing Administration. If, in the public interest, the director determines that exigent circumstances necessitate that the 30-day requirement cannot be met, the director shall immediately in writing advise the Chairperson of the Senate Committee on Health and Human Services and the Assembly Committee on Health of the exigent circumstances and the department's timetable for providing the amendment to the hospital industry.

(g) For each Medi-Cal day of acute inpatient hospital service paid by or on behalf of the department during a payment adjustment year, regardless of dates of service, to a hospital on the applicable disproportionate share list, where that hospital, on the first day of the payment adjustment year, is a major teaching hospital, the hospital shall be paid the sum of all of the following amounts, except as limited by other applicable provisions of this section:

(1) A minimum payment adjustment of three hundred dollars ($300).

(2) The sum of the following amounts, minus three hundred dollars ($300):

(A) A ninety dollar ($90) payment adjustment for each percentage point, from 25 percent to 29 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(B) A seventy dollar ($70) payment adjustment for each percentage point, from 30 percent to 34 percent, inclusive, of the

hospital's low-income number as shown on the disproportionate share list.

(C) A fifty dollar ($50) payment adjustment for each percentage point, from 35 percent to 44 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(D) A thirty dollar ($30) payment adjustment for each percentage point, from 45 percent to 64 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(E) A ten dollar ($10) payment adjustment for each percentage point, from 65 percent to 80 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(3) If the sum calculated under paragraph (2) is less than zero, it shall be disregarded for payment purposes.

(h) For each Medi-Cal day of acute inpatient hospital service paid by or on behalf of the department during a payment adjustment year, regardless of dates of service, to a hospital on the applicable disproportionate share list, where that hospital, on the first day of the payment adjustment year, is a children's hospital, the hospital shall be paid the sum of four hundred fifty dollars ($450), except as limited by other applicable provisions of this section.

(i) For each Medi-Cal day of acute inpatient hospital service paid by or on behalf of the department during a payment adjustment year, regardless of dates of service, to a hospital on the applicable disproportionate share list, where that hospital, on the first day of the payment adjustment year, is an acute psychiatric hospital or an alcohol-drug rehabilitation hospital, the hospital shall be paid the sum of all of the following amounts, except as limited by other applicable provisions of this section:

(1) A minimum payment adjustment of fifty dollars ($50).

(2) The sum of the following amounts, minus fifty dollars ($50):

(A) A ten dollar ($10) payment adjustment for each percentage point, from 25 to 29 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(B) A seven dollar ($7) payment adjustment for each percentage point, from 30 to 34 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(C) A five dollar ($5) payment adjustment for each percentage point, from 35 to 44 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(D) A two dollar ($2) payment adjustment for each percentage point, from 45 to 64 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(E) A one dollar ($1) payment adjustment for each percentage point, from 65 to 80 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(3) If the sum calculated under paragraph (2) is less than zero, it shall be disregarded for payment purposes.

(j) For each Medi-Cal day of acute inpatient hospital service paid by or on behalf of the department during a payment adjustment year, regardless of dates of service, to a hospital on the applicable disproportionate share list, where that hospital does not meet the criteria for receiving payments under subdivision (g), (h), or (i) above, the hospital shall be paid the sum of all of the following amounts, except as limited by other applicable provisions of this section:

(1) A minimum payment adjustment of one hundred dollars ($100).

(2) If the hospital is an emergency services hospital at the time the payment adjustment is paid, a two hundred dollar ($200) payment adjustment.

(3) The sum of the following amounts minus one hundred dollars ($100), and minus an additional two hundred dollars ($200) if the hospital is an emergency services hospital at the time the payment adjustment is paid:

(A) A forty dollar ($40) payment adjustment for each percentage point, from 25 percent to 29 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(B) A thirty-five dollar ($35) payment adjustment for each percentage point, from 30 percent to 34 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(C) A thirty dollar ($30) payment adjustment for each percentage point, from 35 percent to 44 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(D) A twenty dollar ($20) payment adjustment for each percentage point, from 45 percent to 64 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(E) A fifteen dollar ($15) payment adjustment for each percentage point, from 65 percent to 80 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(4) If the sum calculated under paragraph (3) is less than zero, it shall be disregarded for payment purposes.

(k) (1) For any particular payment adjustment year, no hospital may qualify for payments under more than one subdivision among subdivisions (g), (h), (i), and (j). If any hospital qualifies under more than one subdivision, the department shall determine which subdivision shall apply for payments.

(2) For each payment adjustment year beginning with 1992–93, the total applicable per diem payment adjustment amount calculated for each eligible hospital pursuant to subdivision (g), (h), (i), or (j) shall be adjusted by a percentage identical to the percentage increase in transfer amounts that the department has authorized for use

pursuant to paragraph (1) of subdivision (h) of Section 14163 for the particular fiscal year.

(3) If an eligible hospital ordinarily is paid by or on behalf of the department for Medi-Cal acute inpatient hospital services based on a payment methodology other than per diem payments, the eligible hospital shall receive payment adjustment amounts under subdivision (g), (h), (i), or (j) of this section based on its approved Medi-Cal days of acute inpatient hospital care, in the same fashion as all other eligible hospitals under this section.

(*l*) (1) (A) In determining Medi-Cal days of service for purposes of payment adjustments under this section, the department shall recognize all acute inpatient hospital days of service required to be taken into account under federal law.

(B) For the 1992–93 payment year, the department may consider the Medi-Cal days of service provided by the qualifying hospitals for Medi-Cal patients covered by the prepaid health plans contracting directly with the Medi-Cal program in achieving their maximum payments.

(C) For 1993–94 and subsequent payment years, the department may consider the Medi-Cal days of service provided by hospitals for Medi-Cal patients covered by the prepaid health plans contracting directly with the Medi-Cal program in determining the Medi-Cal utilization rate and the maximum days of payment. Additionally, the department may consider the days of service provided by the qualifying hospitals for Medi-Cal patients covered by the prepaid health plans contracting directly with the Medi-Cal program in achieving their maximum payments in those payment years.

(D) In order to meet the requirements of subparagraph (C), the Office of Statewide Health Planning and Development shall provide to the department quarterly access to all data elements on the edited and unedited confidential patient discharge data files, including Social Security account numbers. The department shall match these data with the department's Medi-Cal Eligibility Data System files to extract any data necessary to meet the requirements of subparagraph (C). The department shall maintain the confidentiality of all patient discharge data to the same extent as is required of the Office of Statewide Health Planning and Development.

(2) Notwithstanding paragraph (1), there shall be, for each eligible hospital, a maximum limit on the number of Medi-Cal acute inpatient hospital days for which payment adjustment amounts may be paid under this section with respect to each payment adjustment year. The maximum limit shall be that number of days that equals 80 percent of the eligible hospital's annualized Medi-Cal inpatient paid days, as determined from all Medi-Cal paid claims records available through April 1 preceding the beginning of the payment adjustment year.

(m) No payment rate for any service rendered by any hospital under the Medi-Cal selective provider contracting program shall be reduced as a result of this section.

(n) Notwithstanding any other provision of law, to the extent consistent with federal law, and except as provided by this section, no maximum payment limit shall be placed on the amount of Medi-Cal payment adjustments which may be made to disproportionate share hospitals. The payments made to disproportionate share hospitals pursuant to this section and Section 14105.99 shall not cause any other amounts paid or payable to a hospital to be deemed in excess of any applicable maximum payment limit.

(o) The department shall promptly seek any necessary federal approvals in order to implement this section, including any amendments. Pursuant to Section 1396r-4 of Title 42 of the United States Code, and related federal medicaid statutes and regulations, payment adjustment systems for inpatient hospital services rendered by disproportionate share hospitals shall be included in a state's medicaid plan. Therefore, the department shall, prior to the end of the calendar quarter during which this section is enacted or amended, submit for federal approval an amendment to the Medi-Cal State Plan in connection with the payment adjustment program.

(p) (1) The department shall compute, prior to the beginning of each payment adjustment year, the projected size of the payment adjustment program for the particular payment adjustment year. To do so, the department shall determine the projected total payment adjustment amount for each eligible hospital, and shall add these amounts together to determine the projected total size of the program. To the extent this projected total figure for the program exceeds the portion of the maximum state disproportionate share hospital allotment for California under federal law that the department anticipates will be available for the period in question, the department shall reduce the total per diem composite amounts of the various eligible hospitals in the fashion described below so that the allotment in question will not be exceeded.

(2) As an initial step, all total per diem composite amounts for the entire payment adjustment year shall be reduced proportionately not to exceed 2 percent of each total per diem composite amount.

(3) If the reductions authorized by paragraph (2) are insufficient to align the program with the federal allotment for California, then, to the extent permitted by federal law, the following shall apply:

(A) The adjusted total per diem composite amounts, as calculated under paragraph (2), shall remain in effect for each eligible hospital whose low-income number is 30 percent or more.

(B) The adjusted total per diem composite amounts, as calculated under paragraph (2), for all other eligible hospitals shall be further reduced proportionately to align the program with the federal

allotment, but in no event to a level that is less than 65 percent of the total per diem composite amount that would have been payable to the eligible hospital had no reductions taken place.

(4) If the steps set forth in paragraph (3) are not permissible under federal law, or are not adequate to align the program with the federal allotment, the adjusted total per diem composite amounts for all eligible hospitals for the entire payment adjustment year shall be further reduced proportionately to align the program with the federal allotment, but in no event to a level that would result in adjusted total per diem composite amounts that are less than 65 percent of the total per diem composite amounts that would have been payable had no reductions taken place.

(5) When all eligible hospitals have been reduced to the 65-percent level set forth in paragraphs (3) and (4), the adjusted total per diem composite amounts for all eligible hospitals shall be further reduced proportionately as necessary to align the program with the federal allotment.

(6) This subdivision shall not apply to the 1995–96 payment adjustment year.

(q) (1) If it is necessary to apply the provisions of paragraph (3) of subdivision (p) at any time, the department shall, as soon as practicable, evaluate why the insufficiency arose and identify the projected occurrence and duration of any future insufficiencies.

(2) If the department determines as a result of the evaluations under paragraph (1) that (A) implementation of paragraph (3) of subdivision (p) will likely be necessary to resolve additional insufficiencies for the current payment adjustment year or the next payment adjustment year; and (B) that the level of federal financial participation realized by the payment adjustment program, for the current payment adjustment year as a whole, will be less than 30 percent of the percentage of federal financial participation that normally is applicable for Medi-Cal expenditures for acute inpatient hospital services, and that the level of federal financial participation for the payment adjustment program is expected to continue to remain below that 30 percent level for the next payment adjustment year as a whole, the department shall, as soon as practicable, implement paragraphs (3) and (4).

(3) If the department determines that the circumstances described in paragraph (2) are present, the payment adjustment program shall be terminated, effective as of the earliest date permissible under federal law. In that event, all installment payments to the fund which are already due pursuant to Section 14163 at the time of the department's determination shall remain due, and shall be collected by the Controller. However, installment payments which are not yet due at that time shall not become due.

(4) Within 90 days after the termination of the payment adjustment program, as referred to in paragraph (3), or as soon as practicable, the department shall determine whether any amounts

remain in the fund that are not needed to pay prior payment adjustment amounts under this section. If remaining amounts exist in the fund, they shall be refunded to transferor entities on a pro rata basis, within 45 days after the date of the department's determination.

(r) (1) The state shall be held harmless from any federal disallowance resulting from payments made under this section, and from payments made to hospitals based on transfers accepted by the department under Section 14164. Any hospital that has received payments under this section, or based on transfers accepted by the department under Section 14164, shall be liable for any audit exception or federal disallowance only with respect to the payments made to that hospital. The department shall recoup from a hospital the amount of any audit exception or federal disallowance in the manner authorized by applicable laws and regulations.

(2) Notwithstanding any other provisions of law, if any payment adjustment that has been paid, or that otherwise would have been payable to an eligible hospital under this section, exceeds the OBRA 1993 payment limitation for the particular hospital, the department shall withhold or recoup the payment adjustment amount that exceeds the limitation. The nonfederal component of the amount withheld or recouped shall be redeposited in, or shall remain in, the fund, as applicable, until used for the purposes described in paragraph (2) of subdivision (j) of Section 14163.

(s) (1) The department may utilize existing administrative appeal procedures for purposes of any appealable matter that arises under the payment adjustment program. The matters that may be appealed shall be limited to those related to the following:

(A) Paragraph (5) of subdivision (f).

(B) State audit disallowances of amounts paid to hospitals under the payment adjustment program.

(2) Calculations which are final pursuant to paragraph (4) or (5) of subdivision (f) or the procedures or data on which those calculations are based, shall not be appealed.

(t) (1) Except as provided in paragraph (2), the department shall take all appropriate steps permitted by law and the Medi-Cal State Plan to ensure the following for all years of the payment adjustment program:

(A) That well baby (nursery) days and acute administrative days are included in the payment adjustment program in the same fashion as all other Medi-Cal days of acute inpatient hospital service.

(B) That, to the same extent as any other Medi-Cal days of acute inpatient hospital service, well baby (nursery) days and acute administrative days are included as payable days under the payment adjustment program and in the total of annualized Medi-Cal inpatient paid days.

(C) That, if pursuant to paragraph (2), any well baby (nursery) days or acute administrative days are not included in the payment

adjustment program for payment purposes for any parts of the 1992–93 or 1993–94 payment adjustment years, all those days are nevertheless included in the total of annualized Medi-Cal inpatient paid days for all purposes under the payment adjustment program, unless otherwise barred by paragraph (2).

(2) In no event shall paragraph (1) be implemented in a fashion that is inconsistent with federal medicaid law or the Medi-Cal State Plan.

(u) (1) For the 1993–94 payment adjustment year, each eligible hospital shall also be eligible to receive a supplemental lump-sum payment adjustment, which shall be payable as a result of the hospital being included on the disproportionate share list as of September 30, 1993. For purposes of federal medicaid rules, including Section 447.297(d) of Title 42 of the Code of Federal Regulations, the supplemental payment adjustments shall be applicable to the federal fiscal year that ends on September 30, 1993.

(2) The availability of supplemental payment adjustments under this subdivision shall be determined as follows:

(A) The final maximum state disproportionate share hospital allotment for California under the provisions of applicable federal medicaid rules shall be identified for the 1993 federal fiscal year. This final allotment is two billion one hundred ninety-one million four hundred fifty-one thousand dollars ($2,191,451,000), as specified at page 43186 of Volume 58 of the Federal Register.

(B) The total amount of all per diem payment adjustment amounts under this section, whether paid or payable, that are applicable to the 1993 federal fiscal year shall be determined. The applicability of the per diem payment adjustment amounts to the 1993 federal fiscal year shall be determined in accordance with federal medicaid rules, including Sections 447.297(d)(3) and 447.298 of Title 42 of the Code of Federal Regulations.

(C) The figure determined under subparagraph (B) shall be subtracted from the figure identified under subparagraph (A). If the remainder is a positive figure, supplemental lump-sum payment adjustments shall be made under this subdivision in accordance with paragraph (3).

(3) The amount of the supplemental lump-sum payment adjustment to each eligible hospital shall be computed as follows:

(A) The projected total of all per diem payment adjustment amounts payable to each particular eligible hospital under this section for the 1993–94 payment adjustment year shall be determined. For each hospital, this figure shall be identical to the figure used for the same hospital in the calculations regarding transfer amounts under subdivision (h) of Section 14163 for the 1993–94 state fiscal year.

(B) The projected totals for all eligible hospitals determined under subparagraph (A) shall be added together to determine an aggregate total of all projected per diem payment adjustments for

the 1993–94 payment adjustment year. This figure shall be identical to the aggregate figure for all hospitals used in the calculations regarding transfer amounts under subdivision (h) of Section 14163 for the 1993–94 state fiscal year.

(C) The figure determined for each eligible hospital under subparagraph (A) shall be divided by the aggregate figure determined under subparagraph (B), yielding a percentage figure for each hospital.

(D) The percentage figure determined for each hospital under subparagraph (C) shall be multiplied by the positive remainder calculated under subparagraph (C) of paragraph (2).

(E) The product as so determined for each eligible hospital under subparagraph (D) shall be the supplemental lump-sum payment adjustment amount payable to the particular hospital.

(4) The department shall make partial payments of the supplemental lump-sum payment adjustments to eligible hospitals on or before January 1, 1994. The department shall make final calculations regarding the supplemental lump-sum payments based on data available as of March 1, 1994, and shall distribute the final payments promptly thereafter.

(5) The department shall implement this subdivision only to the extent consistent with federal medicaid law and the Medi-Cal State Plan, and only to the extent that the department determines that federal financial participation is available. In doing so, the department shall comply with any procedures instituted by the Health Care Financing Administration in connection with Sections 447.297(d)(3) and 447.298 of Title 42 of the Code of Federal Regulations.

(v) (1) For the 1993–94 payment adjustment year, each eligible hospital that remains in operation as of June 30, 1994, shall also be eligible to receive a supplemental lump-sum payment adjustment, which shall be payable as a result of the hospital being a disproportionate share hospital in operation as of that date.

(2) The availability of supplemental lump-sum payment adjustments under this subdivision shall be determined by the department as follows:

(A) The final maximum state disproportionate share hospital allotment for California under the provisions of applicable federal medicaid rules shall be identified for the 1994 federal fiscal year. This final allotment is two billion one hundred ninety-one million four hundred fifty-one thousand dollars ($2,191,451,000), as specified on page 22676 of Volume 59 of the Federal Register.

(B) The total amount of all per diem payment adjustment amounts under this section, whether paid or payable, that are applicable to the period October 1, 1993, through June 30, 1994, shall be determined. The applicability of the per diem payment adjustment amounts to this period of time shall be determined in accordance with federal medicaid rules, including Sections

447.297(d)(3) and 447.298 of Title 42 of the Code of Federal Regulations.

(C) The figure determined under subparagraph (B) shall be subtracted from the figure identified under subparagraph (A). If the remainder is a positive figure, supplemental lump-sum payment adjustments shall be made under this subdivision in accordance with paragraph (3).

(3) The amount of the supplemental lump-sum payment adjustment to each hospital shall be computed as follows:

(A) The projected total of all other payment adjustment amounts payable to each particular hospital under this section applicable to the 1993–94 payment adjustment year shall be determined. For each hospital, this figure shall be identical to the sum of the figures used for the same hospital in the calculations regarding transfer amounts under subdivision (h) of Section 14163 for the 1993–94 state fiscal year, not including the supplemental lump-sum payments described in this subdivision.

(B) The projected totals for all hospitals determined under subparagraph (A) shall be added together to determine an aggregate total. This aggregate total shall be identical to the aggregate figure for all hospitals used in the calculations regarding transfer amounts under subdivision (h) of Section 14163 for the 1993–94 state fiscal year, not including the supplemental lump-sum payments described in this subdivision.

(C) The figure determined for each hospital under subparagraph (A) shall be divided by the aggregate figure determined under subparagraph (B), yielding a percentage figure for each hospital.

(D) The percentage figure determined for each hospital under subparagraph (C) shall be multiplied by the positive remainder calculated under subparagraph (C) of paragraph (2).

(E) The product determined under subparagraph (D) for each hospital shall be the supplemental lump-sum payment adjustment amount payable to the particular hospital, which shall be payable because the facility is a disproportionate share hospital in operation as of June 30, 1994.

(4) The department shall make interim and final payments of the supplemental lump-sum payment adjustments to hospitals on or before October 31, 1994.

(5) The department shall implement this subdivision only to the extent consistent with federal medicaid law and the Medi-Cal State Plan, and only to the extent that the department determines that federal financial participation is available. In doing so, the department shall comply with any procedures instituted by the Health Care Financing Administration in connection with Sections 447.297(d)(3) and 447.298 of Title 42 of the Code of Federal Regulations.

(w) (1) For the 1994–95 payment adjustment year, each eligible hospital that remains in operation as of June 30, 1995, shall also be

eligible to receive a supplemental lump-sum payment adjustment, which shall be payable as a result of the hospital being a disproportionate share hospital in operation as of that date.

(2) The availability of supplemental lump-sum payment adjustments under this subdivision shall be determined by the department as follows:

(A) The final maximum state disproportionate share hospital allotment for California under the provisions of applicable federal medicaid rules shall be identified for the 1995 federal fiscal year.

(B) The total amount of all per diem payment adjustment amounts under this section, whether paid or payable, that are applicable to the period October 1, 1994, through June 30, 1995, shall be determined. The applicability of the per diem payment adjustment amounts to this period of time shall be determined in accordance with federal medicaid rules, including Sections 447.297(d)(3) and 447.298 of Title 42 of the Code of Federal Regulations.

(C) The figure determined under subparagraph (B) shall be subtracted from the figure identified under subparagraph (A). If the remainder is a positive figure, supplemental lump-sum payment adjustments shall be made under this subdivision in accordance with paragraph (3).

(3) The amount of the supplemental lump-sum payment adjustment to each hospital shall be computed as follows:

(A) The projected total of all other payment adjustment amounts payable to each particular hospital under this section applicable to the 1994–95 payment adjustment year shall be determined. For each hospital, this figure shall be identical to the sum of the figures used for the same hospital in the calculations regarding transfer amounts under subdivision (h) of Section 14163 for the 1994–95 state fiscal year, not including the supplemental lump-sum payments described in this subdivision.

(B) The projected totals for all hospitals determined under subparagraph (A) shall be added together to determine an aggregate total. This aggregate total shall be identical to the aggregate figure for all hospitals used in the calculations regarding transfer amounts under subdivision (h) of Section 14163 for the 1994–95 state fiscal year, not including the supplemental lump-sum payments described in this subdivision.

(C) The figure determined for each hospital under subparagraph (A) shall be divided by the aggregate figure determined under subparagraph (B), yielding a percentage figure for each hospital.

(D) The percentage figure determined for each hospital under subparagraph (C) shall be multiplied by the positive remainder calculated under subparagraph (C) of paragraph (2).

(E) The product as so determined under subparagraph (D) for each hospital shall be the supplemental lump-sum payment adjustment amount payable to the particular hospital, which shall be

payable because the facility is a disproportionate share hospital in operation as of June 30, 1995.

(4) The department shall make interim and final payments of the supplemental lump-sum payment adjustments to hospitals on or before October 31, 1995.

(5) The department shall implement this subdivision only to the extent consistent with federal medicaid law and the Medi-Cal State Plan, and only to the extent that the department determines that federal financial participation is available. In doing so, the department shall comply with any procedures instituted by the Health Care Financing Administration in connection with Sections 447.297(d)(3) and 447.298 of Title 42 of the Code of Federal Regulations.

(x) (1) With respect to per diem payment adjustments otherwise payable in connection with the period of July 1 through September 30 of the 1994–95 payment adjustment year, payment adjustment amounts shall be adjusted as described in paragraph (2).

(2) No per diem payment adjustment amounts shall be payable in connection with the period of July 1 through September 30 of the 1994–95 payment adjustment year. The Medi-Cal days of acute inpatient hospital service paid by or on behalf of the department that otherwise would have given rise to payment adjustment amounts with respect to this period of time shall not count toward the maximum limit set forth in paragraph (2) of subdivision (*l*).

(y) Notwithstanding any other provision of law, except subdivision (z), the payment adjustment program for the 1995–96 payment adjustment year shall be structured as set forth below.

(1) (A) The department shall, in the manner used for prior years, compute the projected total payment adjustment amounts for all eligible hospitals, by determining for each eligible hospital its total per diem composite amount and multiplying that figure by 80 percent of the hospital's annualized Medi-Cal inpatient paid days.

(B) The products of the calculations under subparagraph (A) for all eligible hospitals shall be added together. The sum of all these figures shall be the unadjusted projected total payment adjustment program for the 1995–96 payment adjustment year.

(2) The remaining amount available as part of the state disproportionate share hospital allotment for California under applicable federal rules for July 1995 through September 1995 (as part of the 1995 federal fiscal year) shall be recognized as being zero.

(3) The department shall estimate what the state disproportionate share hospital allotment for California will be for the 1996 federal fiscal year under applicable federal rules. The estimate shall not exceed the allotment that was applicable for California for the 1995 federal fiscal year.

(4) The estimate identified by the department under paragraph (3) shall be reduced by subtracting the total amount of the

supplemental lump-sum payments paid or payable under subdivisions (v) and (w).

(5) The remainder determined under paragraph (4) shall be added to the amount determined under paragraph (2). The total of those two amounts shall be the unadjusted tentative size of the payment adjustment program for the 1995–96 payment adjustment year.

(6) The total per diem composite amount computed for each eligible hospital under subparagraph (A) of paragraph (1) shall be modified as follows:

(A) The department shall reduce the total per diem composite amount for each eligible hospital by multiplying the amount by an identical percentage. The percentage figure to be used for this purpose shall be that percentage that is derived by dividing the amount determined under paragraph (5) by the unadjusted projected total payment adjustment program amount determined under subparagraph (B) of paragraph (1).

(B) The percentage figure derived under subparagraph (A) shall be applied to the total per diem composite amount for each eligible hospital, yielding an adjusted total per diem composite amount for each hospital for the 1995–96 payment adjustment year.

(C) (i) The adjusted total per diem composite amount determined under subparagraph (B) for each eligible hospital shall be multiplied by 80 percent of the hospital's annualized Medi-Cal inpatient paid days.

(ii) The amount computed for each hospital under clause (i) shall be compared to the OBRA 1993 payment limitation that, in accordance with applicable provisions of the Medi-Cal State Plan, the department has computed for the particular hospital.

(iii) Where the amount computed under clause (i) for the particular hospital is less than the OBRA 1993 payment limitation for the hospital, the amount computed under clause (i) shall be used for purposes of clause (v).

(iv) Where the amount computed under clause (i) for the particular hospital exceeds the OBRA 1993 payment limitation for the hospital, the amount computed under clause (i) shall be reduced to an amount equal to the OBRA 1993 payment limitation for the particular hospital. The amount as so reduced shall be used for purposes of clause (v).

(v) The amount for each hospital, as determined under either clause (iii) or clause (iv), as applicable, shall be the adjusted projected total payment adjustment amount for the hospital for the 1995–96 payment adjustment year.

(D) The adjusted figures computed for all eligible hospitals under subparagraph (C) shall be added together, yielding the adjusted tentative size of the payment adjustment program for the 1995–96 payment adjustment year.

(7) The adjusted tentative size of the payment adjustment program for the 1995–96 payment adjustment year as determined under subparagraph (D) of paragraph (6), and the adjusted projected total payment adjustment amount for each eligible hospital, as determined under subparagraph (C) of paragraph (6), shall be distributed as follows:

(A) No per diem payment adjustment amounts shall be payable in connection with the period of July 1 through September 30 of the 1995–96 payment adjustment year. The Medi-Cal days of acute inpatient hospital service paid by or on behalf of the department that otherwise would have given rise to payment adjustment amounts with respect to this period of time shall not count toward the maximum limit set forth in paragraph (2) of subdivision (*l*).

(B) For all eligible hospitals, the adjusted per diem composite amounts (as determined under subparagraph (B) of paragraph (6)) shall be the amounts payable with respect to the period of October 1 through June 30 of the 1995–96 payment adjustment year, subject to the applicable provisions of subdivision (z).

(8) For the 1995–96 payment adjustment year, each eligible hospital that remains in operation as of June 30, 1996, shall also be eligible to receive a supplemental lump-sum payment adjustment, which shall be payable as a result of the facility being a disproportionate share hospital in operation as of that date. The availability of supplemental lump-sum payment adjustments under this paragraph shall be determined by the department as follows:

(A) The adjusted projected total payment adjustment amount for each hospital, as determined under subparagraph (C) of paragraph (6), shall be identified.

(B) The total amount of all per diem payment adjustment amounts under this section, whether paid or payable, that are applicable to the period July 1, 1995, through June 30, 1996, shall be determined for each hospital, taking into account subparagraph (A) of paragraph (7). The applicability of the per diem payment adjustment amounts to this period of time shall be determined in accordance with federal medicaid rules, including Sections 447.297(d)(3) and 447.298 of Title 42 of the Code of Federal Regulations.

(C) The amount determined under subparagraph (B) for each hospital shall be subtracted from the amount identified under subparagraph (A) for each hospital. If the remainder is a positive figure for the particular hospital, the supplemental lump-sum payment adjustment for the hospital shall be the positive remainder amount, which shall be payable because the facility is a disproportionate share hospital in operation as of June 30, 1996.

(D) The department shall make interim and final payments of the supplemental lump-sum payment adjustments under this paragraph on or before September 30, 1996.

(9) Except as provided in subparagraph (C), for the 1995–96 payment adjustment year each eligible hospital that remains in operation as of June 30, 1996, shall also be eligible to receive a secondary supplemental payment adjustment, which shall be payable as a result of the facility being a disproportionate share hospital in operation as of that date. The availability of secondary supplemental payment adjustments under this paragraph shall be determined by the department as follows:

(A) The maximum amount of secondary supplemental payment adjustments available pursuant to this paragraph shall be calculated as follows:

(i) The total amount of all per diem payment adjustment amounts, whether paid or payable, for the 1995–96 payment adjustment year, as determined under subparagraph (B) of paragraph (8), shall be identified.

(ii) The total amount of all supplemental lump-sum payment adjustments, whether paid or payable, as determined under subparagraph (C) of paragraph (8), shall be identified.

(iii) The department shall estimate the total amount of payment adjustments under this section that it anticipates will be applicable to the period July 1, 1996, through September 30, 1996. The applicability of the payment adjustment amounts to this period of time shall be determined in accordance with federal medicaid rules, including Sections 447.297(d)(3) and 447.298 of Title 42 of the Code of Federal Regulations.

(iv) The department shall identify the amount of the final maximum state disproportionate share hospital allotment for California for the 1996 federal fiscal year under applicable federal rules. The amount identified shall not exceed two billion one hundred ninety-one million four hundred fifty-one thousand dollars ($2,191,451,000).

(v) The amounts identified or estimated under clauses (i), (ii), and (iii) shall be added together, and the sum of these amounts shall be subtracted from the amount identified under clause (iv). The remainder determined from this calculation, or the amount of two hundred million dollars ($200,000,000), whichever is less, shall be the maximum amount available for secondary supplemental payment adjustments under this paragraph.

(B) The maximum amount available for secondary supplemental payment adjustments, as identified under clause (v) of subparagraph (A), shall be distributed to eligible hospitals as follows:

(i) The total amount of all per diem payment adjustments and supplemental lump-sum payment adjustments relating to the 1995–96 payment adjustment year, whether paid or payable, shall be identified for each eligible hospital. However, notwithstanding any other provision of law, those hospitals referred to in subparagraph (C) shall not be included in this step, and shall not receive any

secondary supplemental payment adjustments, as described in subparagraph (C).

(ii) For purposes of secondary supplemental payment adjustments, the eligible hospitals shall be classified into various groups. No hospital may qualify for more than one of these groups. Notwithstanding subclause (II), the hospitals described in subparagraph (C) shall not be included in any of these groups. The following groups of hospitals shall be recognized:

(I) "State of California hospitals," which shall include all eligible hospitals that, as of July 1, 1995, were licensed to the State of California or to the University of California.

(II) "County hospitals," which shall include all eligible hospitals that, as of July 1, 1995, were licensed to a county or a city and county, but shall exclude those hospitals referred to in subparagraph (C).

(III) "Other public hospitals," which shall include all eligible hospitals that, as of July 1, 1995, were licensed to a local hospital district, a local health authority, a city, or any other noncounty political subdivision of the state.

(IV) "Children's hospitals," which shall include all eligible hospitals that, as of July 1, 1995, were included in the children's hospital group under subdivision (h).

(V) "Other nonpublic hospitals," which shall include all eligible hospitals that are not included in any group described in subclauses (I) through (IV).

(iii) The amount determined to be the maximum amount of secondary supplemental payment adjustments under clause (v) of subparagraph (A) shall first be allocated among the groups of hospitals referred to in clause (ii), as follows:

(I) "State of California hospitals": 64.35 percent of the maximum amount.

(II) "County hospitals": 18.095 percent of the maximum amount.

(III) "Other public hospitals": 0.65 percent of the maximum amount.

(IV) "Children's hospitals": 6.755 percent of the maximum amount.

(V) "Other nonpublic hospitals": 10.15 percent of the maximum amount.

(iv) (I) The amount of funds allocated pursuant to clause (iii) to each of the particular groups of hospitals referred to in clauses (ii) and (iii) shall then be distributed as secondary supplemental payment adjustments among the eligible hospitals within each particular group. The secondary supplemental distributions shall be made on a descending pro rata basis within each group. Each cycle of the descending pro rata distribution shall be considered to be a phase of the process. As described in subclauses (II) to (V), inclusive, in each phase of the descending pro rata distribution, the pro rata share of the distribution to each hospital that remains eligible to receive additional distributions shall be computed based on the ratio

of the total payment adjustments that the particular hospital has already earned under the payment adjustment program for the 1995–96 payment adjustment year, as compared to the total payment adjustments already earned by the other hospitals in the particular group that remain eligible to receive the additional distributions.

(II) For the first phase, the total amount of payment adjustments under this section for the 1995–96 payment adjustment year, including all per diem payment adjustments and all supplemental lump-sum payment adjustments, that are determined by the department as already being paid or payable to each hospital eligible for the distribution shall be determined.

(III) The figures determined under subclause (II) for each hospital in the particular group shall be added together to determine an aggregate total.

(IV) The figures determined for each hospital under subclause (II) shall be divided by the aggregate total determined under subclause (III), yielding a percentage figure for each hospital.

(V) The percentage figure determined for each hospital under subclause (IV) shall be applied to the maximum portion of the funds allocated to the particular group under clause (iii) that can be distributed in the particular phase until a hospital in the particular group reaches the limitation set forth in clause (v).

(v) For each hospital, no secondary supplemental payment adjustment shall be paid to the extent that either of the following conditions exist:

(I) The secondary supplemental payment adjustment would cause the total of all payment adjustments to the hospital under this section relating to the 1995–96 payment adjustment year to exceed the amount that is the product of multiplying 0.95 times the particular hospital's OBRA 1993 payment limitation for the 1995–96 payment adjustment year, as computed by the department in accordance with applicable provisions of the Medi-Cal State Plan.

(II) Without regard to any secondary supplemental payment adjustment, the hospital has already received or has earned payment adjustments relating to the 1995–96 payment adjustment year that equal or exceed the product referred to in subclause (I).

(vi) Any secondary supplemental payment adjustment amount, or portion thereof, that otherwise would have been payable to a particular hospital under this paragraph, but that is barred by the limitation described in clause (v), shall be distributed by the department through additional phases of the descending pro rata distribution process to those hospitals within the same group, as set forth in clauses (ii) and (iii), as the particular hospital. For each additional phase, the mathematical steps referred to in subclauses (II) to (V), inclusive, of clause (iv) shall be repeated for those hospitals that have not reached the limitation set forth in clause (v). The phases shall continue until the funds allocated to the particular group under clause (iii) have been fully exhausted. No such

distribution, however, shall be in an amount that would cause any hospital to exceed the limitation set forth in clause (v).

(C) Notwithstanding any other provision of law, prior to the allocation or distribution of any secondary supplemental payment adjustments, hospitals that, as of July 1, 1995, were part of a county-operated health system of three or more eligible hospitals licensed to the county, shall be deemed to have reached the limitations on total payments described in subclause (II) of clause (v) of subparagraph (B). Data regarding payment adjustments earned by these hospitals with respect to the 1995–96 payment adjustment year, whether paid or payable, shall be included in the computations under subparagraph (A), but excluded from the computations under subparagraph (B).

(D) The department shall make payments of the secondary supplemental payment adjustments to hospitals on or before November 30, 1996.

(10) The final total amount of per diem payment adjustments paid by the department for the 1995–96 payment adjustment year, plus the final total amount of supplemental lump-sum payment adjustments and secondary supplemental payment adjustments paid by the department for the 1995–96 payment adjustment year, shall be the maximum size of the payment adjustment program for the 1995–96 payment adjustment year.

(11) The department shall implement this subdivision only to the extent consistent with federal medicaid law and the Medi-Cal State Plan, and only to the extent that the department determines that federal financial participation is available. In doing so, the department shall comply with any procedures instituted by the Health Care Financing Administration in connection with Sections 447.297(d)(3) and 447.298 of Title 42 of the Code of Federal Regulations.

(z) (1) (A) Notwithstanding any other provision of law (except for subparagraph (B)), all Medi-Cal days of acute inpatient hospital service paid by or on behalf of the department that give rise to payment adjustment amounts with respect to the period October 1, 1994, through June 30, 1995, shall be treated as involving 1.4 days for purposes of payment adjustments with respect to this period of time. As a result, each per diem payment adjustment amount otherwise payable to the hospital in connection with these days shall be increased by 40 percent. The Medi-Cal days in question shall be treated as involving 1.4 days toward the maximum limit set forth in paragraph (2) of subdivision (*l*). The Medi-Cal days in question shall be treated as involving 1.0 days for purposes of determining the hospital's annualized Medi-Cal inpatient paid days for the next applicable payment adjustment year.

(B) For the 1994–95 payment adjustment year, no eligible hospital shall receive total payment adjustments, including per diem payment adjustment amounts and any supplemental lump-sum

payment adjustment amounts, in excess of the projected total payment adjustment amounts that were computed or recomputed, as applicable, for the hospital by the department with respect to the 1994–95 payment adjustment year. For each hospital, this maximum figure shall not exceed the sum of the following two components:

(i) The final figure computed by the department as the hospital's total per diem composite amount (including any applicable adjustments under subdivision (p)), multiplied by 80 percent of the hospital's annualized Medi-Cal inpatient paid days.

(ii) The amount calculated by the department as the hospital's pro rata share (based on the figures for all hospitals computed under clause (i)) of the remainder determined by subtracting (I) the sum of the figures computed for all hospitals under clause (i) from (II) the final maximum state disproportionate share hospital allotment for California under applicable federal rules for the 1995 federal fiscal year.

(C) Any payment adjustment amount that otherwise would be payable to a hospital, but that is barred by subparagraph (B), shall be withheld or recouped by the department and distributed on a descending pro rata basis as part of the supplemental lump-sum distribution described in subdivision (w) to those hospitals that have not reached their maximum figures as described in subparagraph (B).

(2) (A) Notwithstanding any other provision of law, except for subparagraph (B), all Medi-Cal days of acute inpatient hospital service paid by or on behalf of the department that give rise to payment adjustment amounts with respect to the period October 1, 1995, through June 30, 1996, shall be treated as involving 1.4 days for purposes of payment adjustments with respect to this period of time. As a result, each per diem payment adjustment amount otherwise payable to the hospital in connection with these days shall be increased by 40 percent. The Medi-Cal days in question shall be treated as involving 1.4 days toward the maximum limit set forth in paragraph (2) of subdivision (*l*). The Medi-Cal days in question shall be treated as involving 1.0 days for purposes of determining the hospital's annualized Medi-Cal inpatient paid days for the next applicable payment adjustment year.

(B) For the 1995–96 payment adjustment year, no eligible hospital shall receive total payment adjustments, including per diem payment adjustment amounts, supplemental lump-sum payment adjustment amounts, and secondary supplemental payment adjustments in excess of the hospital's OBRA 1993 payment limitation as computed by the department pursuant to the Medi-Cal State Plan. No hospital shall receive secondary supplemental payment adjustments to the extent the payment adjustments would be inconsistent with paragraph (9) of subdivision (y).

(C) Any payment adjustment amount that otherwise would be payable to a hospital, but that is barred by subparagraph (B), shall be

withheld or recouped by the department and thereafter distributed to other eligible hospitals, refunded to transferors, or otherwise processed in accordance with this section and Section 14163.

(3) Notwithstanding any other provision of law, to the extent necessary or appropriate to implement and administer the amendments to this section enacted during the 1994 calendar year, the department may utilize an approach involving interim payments, with reconciliation to final payments within a reasonable time.

(aa) (1) For the 1996–97 payment adjustment year, each eligible hospital that remains in operation as of June 30, 1997, shall also be eligible to receive a supplemental lump-sum payment adjustment, that shall be payable as a result of the facility being a disproportionate share hospital in operation as of that date. The availability of supplemental lump-sum payment adjustments under this paragraph shall be determined by the department as follows:

(A) The projected total payment adjustment amount for each hospital, as determined by the department at the outset of the payment adjustment year, including any reductions arising from payment limitations under this section, shall be identified. For each hospital, this amount shall be identical to the amount that was used for the same hospital in the calculations made at the outset of the 1996–97 state fiscal year regarding transfer amounts under subdivision (h) of Section 14163 for that fiscal year.

(B) The total amount of all per diem payment adjustment amounts under this section, whether paid or payable, that are applicable to the period July 1, 1996, through June 30, 1997, shall be determined for each hospital. The applicability of the per diem payment adjustment amounts to this period of time shall be determined in accordance with federal medicaid rules including Sections 447.297(d)(3) and 447.298 of Title 42 of the Code of Federal Regulations.

(C) The amount determined under subparagraph (B) for each hospital shall be subtracted from the amount identified under subparagraph (A) for each hospital. If the remainder is a positive figure for the particular hospital, the supplemental lump-sum payment adjustment for the hospital shall be the positive remainder amount, which shall be payable because the facility is a disproportionate share hospital in operation as of June 30, 1997.

(D) The department shall make interim and final payments of the supplemental lump-sum payment adjustments under this paragraph on or before September 30, 1997.

(2) The department shall implement this subdivision only to the extent consistent with federal medicaid law and the Medi-Cal State Plan, and only to the extent that the department determines that federal financial participation is available. In doing so, the department shall comply with any procedures instituted by the Health Care Financing Administration in connection with Sections

447.297(d)(3) and 447.298 of Title 42 of the Code of Federal Regulations.

(ab) (1) For the 1997–98 payment adjustment year, eligible hospitals that meet the requirements of this subdivision and that remain in operation as of September 30, 1997, shall be eligible to receive a special supplemental payment adjustment, which shall be payable as a result of the facility being a disproportionate share hospital in operation as of that date. For purposes of federal medicaid rules, including Section 447.297(d) of Title 42 of the Code of Federal Regulations, the special supplemental payment adjustments shall be applicable to the federal fiscal year that ends on September 30, 1997.

(2) The availability of special supplemental payment adjustments under this subdivision shall be determined as follows:

(A) The final maximum state disproportionate share hospital allotment for California under the provisions of applicable federal medicaid rules shall be identified for the 1997 federal fiscal year.

(B) The total amount of all per diem payment adjustment amounts and supplemental payment adjustments under this section (exclusive of any payments under this subdivision) applicable to the 1997 federal fiscal year, whether paid or payable, shall be determined. The applicability of per diem payment adjustment amounts and supplemental payment adjustments of all types to the 1997 federal fiscal year shall be determined in accordance with federal medicaid rules, including Sections 447.297(d)(3) and 447.298 of Title 42 of the Code of Federal Regulations.

(C) The figure determined under subparagraph (B) shall be subtracted from the figure identified under subparagraph (A). If the remainder is a positive figure, special supplemental payment adjustments shall be made under this subdivision in accordance with paragraph (3). The positive remainder shall be the maximum amount of special supplemental payment adjustments under this subdivision.

(3) (A) For purposes of these special supplemental payment adjustments, only hospitals that can be categorized into either of the two groups specified in clauses (i) and (ii) shall be eligible to receive the supplemental payment adjustments, and no hospital may qualify for more than one of the two groups. The following groups of hospitals shall be recognized:

(i) "Public hospitals," which shall include all eligible hospitals that, as of July 1, 1997, met the definition of a public hospital.

(ii) "Nonpublic hospitals," which shall include all eligible hospitals that, as of July 1, 1997, met the definition of a nonpublic hospital.

(B) The amount determined to be the maximum amount of special supplemental payment adjustments under subparagraph (C) of paragraph (2) shall first be allocated between the two groups of hospitals referred to in subparagraph (A) as follows:

(i) "Public hospitals": 74.885 percent of the maximum amount.

(ii) "Nonpublic hospitals": 25.115 percent of the maximum amount.

(C) The amount of funds allocated pursuant to subparagraph (B) to each of the particular groups of hospitals referred to in subparagraphs (A) and (B) shall then be distributed as special supplemental payment adjustments among the eligible hospitals within each particular group as follows:

(i) The department shall compute the projected total payment adjustment amounts for all eligible hospitals for the 1997–98 payment adjustment year, exclusive of any payments under this subdivision, subdivision (ad), or subdivision (af), by determining for each eligible hospital its total per diem composite amount and multiplying that figure by the maximum number of the hospital's Medi-Cal inpatient paid days determined under paragraph (2) of subdivision (*l*). For purposes of this clause, the determinations shall be without regard to the OBRA 1993 payment limitations.

(ii) The amount computed under clause (i) for each hospital described in subparagraph (A) shall be compared to the amount that is the product of multiplying 0.95 times the OBRA 1993 payment limitation that, in accordance with applicable provisions of the Medi-Cal State Plan, the department has computed for the particular hospital for the 1997–98 payment adjustment year.

(iii) Where the amount computed under clause (i) for the particular hospital is equal to or exceeds the product computed for the hospital under clause (ii), the hospital shall not receive a special supplemental payment adjustment. Data regarding hospitals that have reached this limitation shall not be used for purposes of clauses (v) through (viii).

(iv) Where the amount computed under clause (i) for the particular hospital is less than the product computed for the hospital under clause (ii), the amount computed under clause (i) for the hospital shall be used for purposes of clauses (v) through (viii).

(v) The figures determined under clause (iv) for each hospital in the particular group shall be added together to determine an aggregate total for each group.

(vi) The figures determined for each hospital under clause (iv) shall be divided by the aggregate total determined under clause (v) for the particular group, yielding a percentage figure for each hospital.

(vii) The percentage figure determined for each hospital under clause (vi) shall be applied to the maximum portion of the funds allocated to the particular group under subparagraph (B), to determine the hospital's pro rata share of the special supplemental lump-sum payment adjustments. Except, however, in the case of a nonpublic hospital that, as of July 1, 1997, meets the definition of a children's hospital, such pro rata share otherwise determined shall be multiplied by a factor of 1.09, yielding a modified pro rata share. The pro rata share for the other nonpublic hospitals shall be reduced

accordingly, yielding a modified pro rata share, so that the maximum portion of the funds allocated to the nonpublic hospitals group will not be exceeded. The pro rata share or modified pro rata share, as applicable, for each hospital, as computed under this clause, shall also be used for all purposes relating to descending pro rata distributions under clause (viii).

(viii) In no event shall a hospital receive special supplemental payment adjustment amounts in excess of the difference between the product computed for the hospital under clause (ii) and the amount computed for the hospital under clause (i). Any special supplemental payment adjustment amount, or portion thereof, that otherwise would have been payable under this paragraph to a hospital, but that is barred by this limitation, shall be distributed on a descending pro rata basis to those hospitals within the same group.

(D) The department shall make interim and final payments of the special supplemental payment adjustments to hospitals on or before February 28, 1998.

(4) The department shall implement this subdivision only if consistent with federal medicaid law and the Medi-Cal State Plan, and only if the department determines that federal financial participation is available.

(ac) Notwithstanding any other provision of law, the payment adjustment program with respect to the period October 1, 1997 through June 30, 1998, shall be structured as set forth below and in subdivisions (ad) and (af). However, if the effective date of the Medi-Cal State Plan amendment relating to this subdivision is later than October 1, 1997, as approved by the federal Health Care Financing Administration, all references in this subdivision to the period October 1, 1997, through June 30, 1998, shall be references to the period that commences on that effective date and continues through June 30, 1998.

(1) (A) The department shall utilize the computations made pursuant to clause (i) of subparagraph (C) of paragraph (3) of subdivision (ab) of the projected total payment adjustment amounts for all eligible hospitals for the entire 1997–98 payment adjustment year, exclusive of any supplemental payments under subdivision (ab), (ad), or (af).

(B) The computed amount referred to in subparagraph (A) for each hospital shall be compared to the OBRA 1993 payment limitation that, in accordance with applicable provisions of the Medi-Cal State Plan, the department has computed for the particular hospital.

(C) Where the computed amount referred to in subparagraph (A) for the particular hospital exceeds the OBRA 1993 payment limitation for the hospital, the amount computed under subparagraph (A) shall be reduced to an amount equal to the OBRA 1993 payment limitation for the particular hospital. The amount so reduced shall be used for purposes of subparagraph (E).

(D) Where the computed amount referred to in subparagraph (A) for the particular hospital is equal to or less than the OBRA 1993 payment limitation for the hospital, the computed amount referred to in subparagraph (A) shall be used for purposes of subparagraph (E).

(E) The amounts determined under subparagraphs (C) and (D) for all eligible hospitals shall be added together, yielding an aggregate sum. The aggregate sum shall be the unadjusted projected total payment adjustment program for the entire 1997–98 payment adjustment year, exclusive of any supplemental payments under subdivision (ab) or (ad).

(2) The initial maximum size of the payment adjustment program for the entire 1997–98 payment adjustment year shall be set at one billion seven hundred fifty million dollars ($1,750,000,000), exclusive of any supplemental payments under subdivision (ab) or (ad).

(3) The department shall increase or decrease the amount determined for each eligible hospital under subparagraph (C) or (D) of paragraph (1), as applicable, by multiplying the amount by an identical percentage, yielding the hospital's tentative adjusted projected total payment adjustment amount for the 1997–98 payment adjustment year. The identical percentage figure to be used for this purpose shall be that percentage that is derived by dividing the amount set forth in paragraph (2) by the aggregate sum determined under subparagraph (E) of paragraph (1). Except, however, the amount determined for a hospital under subparagraph (C) or (D) of paragraph (*l*) shall not be increased if it would exceed the OBRA 1993 payment limitation for the hospital.

(4) The tentative adjusted projected total payment adjustment amount computed for each eligible hospital under paragraph (3) shall be further adjusted as follows:

(A) (i) For each eligible hospital that met the definition of a nonpublic-converted hospital as of July 1, 1997, the hospital's tentative adjusted projected total payment adjustment amount shall be multiplied by a "nonpublic-converted hospital adjustment factor." The applicable adjustment factor shall be that which is necessary to result in an amount, for each hospital, equal to the amount used for the particular hospital under subparagraph (E) of paragraph (1). The amount so adjusted shall be used for purposes of clause (iii).

(ii) The total amount of all per diem payment adjustment amounts under this section, whether paid or payable, applicable to the period July 1, 1997, through September 30, 1997, shall be determined for each hospital referred to in clause (i). The applicability of the per diem payment adjustment amounts to the period July 1, 1997, through September 30, 1997, shall be determined in accordance with federal medicaid rules, including Sections 447.297(d)(3) and 447.298 of Title 42 of the Code of Federal Regulations. However, if the effective date of the Medi-Cal State Plan

amendment relating to this subdivision is later than October 1, 1997, as approved by the federal Health Care Financing Administration, all determinations under this clause shall include per diem payment adjustment amounts applicable to the period July 1, 1997, through the date that is one day prior to that effective date.

(iii) The amount determined for each hospital under clause (i) shall be reduced by the amount determined under clause (ii) for the hospital. The resulting figure shall be the final adjusted projected total payment adjustment amount for the hospital for the period October 1, 1997, through June 30, 1998, which shall be paid to the hospital in accordance with paragraph (5).

(B) (i) For each eligible hospital that met the definition of a nonpublic hospital as of July 1, 1997, the hospital's tentative adjusted projected total payment adjustment amount shall be multiplied by a "nonpublic hospital adjustment factor." The applicable adjustment factor shall be derived as follows:

(I) The tentative adjusted projected total payment adjustment amounts determined under paragraph (3) for each nonpublic hospital described above shall be added together.

(II) The amount identified in paragraph (2) shall be divided by 2.38. The resulting figure shall then be reduced by the sum of the amounts determined for all nonpublic-converted hospitals under clauses (ii) and (iii) of subparagraph (A).

(III) The amount computed under subclause (II) shall be divided by 2, and the result thereof further reduced by the amount of thirty-seven million five hundred thousand dollars ($37,500,000).

(IV) The applicable adjustment factor shall be that ratio that results from dividing the amount derived in subclause (III) by the amount derived in subclause (I).

(ii) The total amount of all per diem payment adjustment amounts under this section, whether paid or payable, applicable to the period July 1, 1997, through September 30, 1997, shall be determined for each hospital referred to in clause (i). The applicability of the per diem payment adjustment amounts to the period July 1, 1997, through September 30, 1997, shall be determined in accordance with federal medicaid rules including Sections 447.297(d)(3) and 447.298 of Title 42 of the Code of Federal Regulations. However, if the effective date of the Medi-Cal State Plan amendment relating to this subdivision is later than October 1, 1997, as approved by the federal Health Care Financing Administration, all determinations under this clause shall include per diem payment adjustment amounts applicable to the period July 1, 1997, through the date that is one day prior to that effective date.

(iii) The amount determined for each hospital under clause (i) shall be reduced by the amount determined under clause (ii) for the hospital. The resulting figure shall be the final adjusted projected total payment adjustment amount for the hospital for the period

October 1, 1997, through June 30, 1998, which shall be paid to the hospital in accordance with paragraph (5).

(C) (i) For each eligible hospital that met the definition of a public hospital as of July 1, 1997, the hospital's tentative adjusted projected total payment adjustment amount shall be multiplied by a "public hospital adjustment factor." The applicable adjustment factor shall be derived as follows:

(I) The tentative adjusted projected total payment adjustment amounts determined under paragraph (3) for each public hospital described above shall be added together.

(II) The amount identified in paragraph (2) shall be reduced by the sum of the amounts determined for all nonpublic-converted hospitals under clauses (ii) and (iii) of subparagraph (A) and the sum of the amounts determined for all nonpublic hospitals under clauses (ii) and (iii) of subparagraph (B).

(III) The applicable adjustment factor shall be that ratio that results from dividing the amount derived in subclause (II) by the amount derived in subclause (I).

(ii) The total amount of all per diem payment adjustment amounts under this section, whether paid or payable, applicable to the period July 1, 1997, through September 30, 1997, shall be determined for each hospital referred to in clause (i). The applicability of the per diem payment adjustment amounts to the period July 1, 1997, through September 30, 1997, shall be determined in accordance with federal medicaid rules, including Sections 447.297(d)(3) and 447.298 of Title 42 of the Code of Federal Regulations. However, if the effective date of the Medi-Cal State Plan amendment relating to this subdivision is later than October 1, 1997, as approved by the federal Health Care Financing Administration, all determinations under this clause shall include per diem payment adjustment amounts applicable to the period July 1, 1997, through the date that is one day prior to that effective date.

(iii) The amount determined for each hospital under clause (i) shall be reduced by the amount determined under clause (ii) for the hospital. The resulting figure shall be the final adjusted projected total payment adjustment amount for the hospital for the period October 1, 1997, through June 30, 1998, which shall be paid to the hospital in accordance with paragraph (5).

(5) The final adjusted projected total payment adjustment amount determined for each eligible hospital for the period October 1, 1997, through June 30, 1998, shall be distributed in 16 or fewer equal installments to be paid no later than the 10th and 25th day of each month during the period that commences on the effective date of the Medi-Cal State Plan amendment relating to this subdivision, as approved by the federal Health Care Financing Administration, and continues through May 25, 1998.

(6) Notwithstanding any other provision of law, for the entire 1997–98 payment adjustment year, no eligible hospital shall receive

total payment adjustments, including per diem payment adjustments, payments under this subdivision, and any supplemental payments under subdivision (ab) or (ad), in excess of the hospital's OBRA 1993 payment limitation as computed by the department pursuant to the Medi-Cal State Plan. No hospital shall receive any special supplemental payment adjustments or supplemental lump-sum payment adjustments to the extent the payments would be inconsistent with subdivision (ab) or (ad), respectively.

(7) The aggregate sum of the final adjusted projected total payment adjustment amounts computed under paragraph (4) for each eligible hospital for the period October 1, 1997, through June 30, 1998, plus the aggregate sum of the amounts determined for each eligible hospital under clause (ii) of subparagraph (A) of paragraph (4), clause (ii) of subparagraph (B) of paragraph (4) and clause (ii) of subparagraph (C) of paragraph (4), shall be the maximum size of the payment adjustment program for the entire 1997–98 payment adjustment year, exclusive of the special supplemental payment adjustments provided for under subdivision (ab) and the supplemental lump-sum payment adjustments provided for under subdivision (ad).

(8) The department shall implement this subdivision only if consistent with federal medicaid law and the Medi-Cal State Plan, and only if the department determines that federal financial participation is available.

(ad) (1) for the 1997–98 payment adjustment year, eligible hospitals that meet the requirements of this subdivision and that remain in operation as of June 30, 1998, shall be eligible to receive a supplemental lump-sum payment adjustment, which shall be payable as a result of the facility being a disproportionate share hospital in operation as of that date, but only if the hospital has remained in operation for the period October 1, 1997, to June 30, 1998, inclusive.

(2) The amount of supplemental lump-sum payment adjustments available to hospitals under this subdivision shall be four hundred five million dollars ($405,000,000).

(3) (A) For purposes of these supplemental lump-sum payment adjustments, only hospitals that can be categorized into either of the two groups specified in clauses (i) and (ii) shall be eligible to receive the supplemental payment adjustments, and no hospital may qualify for more than one of the two groups. The following groups of hospitals shall be recognized:

(i) "Public hospitals," which shall include all eligible hospitals that, as of July 1, 1997, met the definition of a public hospital.

(ii) "Nonpublic hospitals," which shall include all eligible hospitals that, as of July 1, 1997, met the definition of a nonpublic hospital.

(B) The amount of supplemental lump-sum payment adjustments as referred to in paragraph (2) shall first be allocated between the two groups of hospitals referred to in subparagraph (A) as follows:

(i) "Public hospitals": 72.17 percent of the amount.

(ii) "Nonpublic hospitals": 27.83 percent of the amount.

(C) The amount of funds allocated pursuant to subparagraph (B) to each of the particular groups of hospitals referred to in subparagraphs (A) and (B) shall then be distributed as supplemental lump-sum payment adjustments among the eligible hospitals within each particular group as follows:

(i) The department shall identify for each eligible hospital the total amount of payment adjustments under this section (exclusive of any payments under this subdivision and subdivision (af)) applicable to the 1997–98 payment adjustment year, whether paid or payable. The applicability of the payment adjustment amounts to this period of time shall be determined in accordance with federal medicaid rules, including Sections 447.297(d)(3) and 447.298 of Title 42 of the Code of Federal Regulations.

(ii) The amount identified for each hospital under clause (i) shall be compared to the OBRA 1993 payment limitation that, in accordance with applicable provisions of the Medi-Cal State Plan, the department has computed for the particular hospital for the 1997–98 payment adjustment year.

(iii) Where the amount computed under clause (i) for the particular hospital is equal to or exceeds the OBRA 1993 payment limitation for the hospital, the hospital shall not receive a supplemental lump-sum payment adjustment. Data regarding hospitals that have reached this limitation shall not be used for purposes of clauses (v) through (viii).

(iv) Where the amount computed under clause (i) for the particular hospital is less than the OBRA 1993 payment limitation for the hospital, the amount computed under clause (i) minus that amount paid or payable to the hospital under subdivision (ab) shall be used for purposes of clauses (v) through (viii).

(v) The figures determined under clause (iv) for each hospital in the particular group shall be added together to determine an aggregate total for each group.

(vi) The figures determined for each hospital under clause (iv) shall be divided by the aggregate total determined under clause (v) for the particular group, yielding a percentage figure for each hospital.

(vii) The percentage figure determined for each hospital under clause (vi) shall be applied to the maximum portion of the funds allocated to the particular group under subparagraph (B), to determine the hospital's pro rata share of the supplemental lump-sum payment adjustments. Except, however, in the case of a nonpublic hospital that, as of July 1, 1997, meets the definition of a children's hospital, such pro rata share otherwise determined shall be multiplied by a factor of 1.09, yielding a modified pro rata share. The pro rata share for the other nonpublic hospitals shall be reduced accordingly, yielding a modified pro rata share, so that the maximum

portion of the funds allocated to the nonpublic hospitals group will not be exceeded. The pro rata share or modified pro rata share, as applicable, for each hospital, as computed under this clause, shall also be used for all purposes relating to descending pro rata distributions under clause (viii).

(viii) In no event shall a hospital receive supplemental lump-sum payment adjustment amounts in excess of the difference between the OBRA 1993 payment limitation for the hospital and the amount computed for the hospital under clause (i). Any supplemental lump-sum payment adjustment amount, or portion thereof, that otherwise would have been payable under this paragraph to a hospital, but that is barred by this limitation, shall be distributed on a descending pro rata basis to those hospitals within the same group.

(D) The department shall make interim and final payments of the supplemental lump-sum payment adjustments to hospitals on or before August 15, 1998.

(4) The department shall implement this subdivision only if consistent with federal medicaid law and the Medi-Cal State Plan, and only if the department determines that federal financial participation is available.

(5) Notwithstanding any other provision of law, the payment adjustments, data, and related aspects of subdivision (af) shall not be taken into account for any purpose under this subdivision, subdivision (ab), or subdivision (ac).

(ae) (1) In the event that any provision of subdivision (ab), (ac), or (ad), as reflected in a proposed Medi-Cal State Plan amendment, is not approved by the federal Health Care Financing Administration, the director shall modify the proposed Medi-Cal State Plan amendment in a manner intended to be consistent with all applicable federal requirements. Subject to the requirements of federal law, in developing the modified proposed Medi-Cal State Plan amendment, the director shall, to the extent practicable, incorporate, implement, and modify, as necessary, the payment methodologies applicable to the 1997–98 payment adjustment year in a manner that is as consistent as possible with the approach and intent of subdivisions (ab), (ac), and (ad), respectively.

(2) In the event that any provision of subdivision (af), (ag), (ah), (ai), (aj), or (ak), as reflected in a proposed Medi-Cal State Plan amendment, is not approved by the federal Health Care Financing Administration, the director shall modify that proposed Medi-Cal State Plan amendment in a manner intended to be consistent with all applicable federal requirements. Subject to the requirements of federal law, in developing the modified proposed Medi-Cal State Plan amendment, the director shall, to the extent practicable, incorporate, implement, and modify, as necessary, the payment methodologies applicable to the 1997–98, 1998–99, 1999–2000 and 2000–01 payment adjustment years in a manner that is as consistent

as possible with the approach and intent of subdivisions (af), (ag), (ah), (ai), (aj), and (ak), respectively.

(af) (1) The provisions of this subdivision shall apply for the 1997–98 payment adjustment year, and, for all purposes under the program, shall be implemented subsequent to the provisions of subdivisions (ab), (ac), and (ad). Under this subdivision, eligible hospitals that, as of October 1, 1997, were part of a county-operated health system of three or more eligible hospitals licensed to the county, and that are in operation as of June 30, 1998, shall be eligible to receive an additional supplemental lump-sum payment adjustment, which shall be payable as a result of the facility being a disproportionate share hospital in operation as of that date, but only if the hospital has remained in operation for the period October 1, 1997, through June 30, 1998.

(2) The maximum amount of additional supplemental lump-sum payment adjustments under this subdivision shall be one hundred sixty-six million dollars ($166,000,000).

(3) The maximum amount of funds specified under paragraph (2) shall be distributed as additional supplemental lump-sum payment adjustments among the hospitals eligible under this subdivision as follows:

(A) The department shall identify for each eligible hospital the total amount of payment adjustments under this section (exclusive of any payments under this subdivision) applicable to the 1997–98 payment adjustment year, whether paid or payable. The applicability of the payment adjustment amounts to this period of time shall be determined in accordance with federal medicaid rules, including Sections 447.297(d)(3) and 447.298 of Title 42 of the Code of Federal Regulations.

(B) The amount identified for each hospital under subparagraph (A) shall be compared to the OBRA 1993 payment limitation that, in accordance with applicable provisions of the Medi-Cal State Plan, the department has computed for the particular hospital for the 1997–98 payment adjustment year.

(C) Where the amount computed under subparagraph (A) for the particular hospital is equal to or exceeds the OBRA 1993 payment limitation for the hospital, the hospital shall not receive an additional supplemental lump-sum payment adjustment. Data regarding hospitals that have reached this limitation shall not be used for purposes of subparagraphs (E) through (H).

(D) Where the amount computed under subparagraph (A) for the particular hospital is less than the OBRA 1993 payment limitation for the hospital, the amount computed under subparagraph (A) shall be used for purposes of subparagraphs (E) through (H).

(E) The figures determined under subparagraph (D) for each hospital eligible to receive additional supplemental lump-sum payment adjustments under this subdivision shall be added together to determine an aggregate total.

(F) The figures determined for each hospital under subparagraph (D) shall be divided by the aggregate total determined under subparagraph (E), yielding a percentage figure for each hospital.

(G) The percentage figure determined for each hospital under subparagraph (F) shall be applied to the maximum amount specified in paragraph (2), to determine the hospital's pro rata share of the additional supplemental lump-sum payment adjustments.

(H) In no event shall a hospital receive additional supplemental lump-sum payment adjustment amounts in excess of the difference between the OBRA 1993 payment limitation for the hospital and the amount computed for the hospital under subparagraph (A). Any additional supplemental lump-sum payment adjustment amount, or portion thereof, that otherwise would have been payable under this paragraph to a hospital, but that is barred by this limitation, shall be distributed on a descending pro rata basis to those hospitals eligible for distributions under this subdivision that have not reached their OBRA 1993 payment limitation.

(4) The department shall make interim and final payments of the additional supplemental lump-sum payment adjustments to hospitals on or before August 15, 1998.

(5) The department shall implement this subdivision only to the extent consistent with federal medicaid law and the Medi-Cal State Plan, and only to the extent that the department determines that federal financial participation is available.

(ag) Notwithstanding any other provision of law, the payment adjustment program for the 1998–99 payment adjustment year shall be structured as set forth below and in subdivision (ah).

(1) (A) The department shall compute the projected total payment adjustment amounts for all eligible hospital for the 1998–99 payment adjustment year by determining for each eligible hospital its total per diem composite amount and multiplying that figure by the maximum number of the hospital's Medi-Cal inpatient paid days determined under paragraph (2) of subdivision (*l*). For purposes of this subparagraph, such determinations shall be without regard to the OBRA 1993 payment limitations. With respect to a public hospital that, as of July 1, 1998, is part of a county-operated health system of three or more eligible hospitals licensed to the county, the projected total payment adjustment amount shall be reduced by an amount equal to the amount paid or payable to the hospital under subdivision (af).

(B) The computed amount referred to in subparagraph (A) for each hospital shall be compared to the OBRA 1993 payment limitation that, in accordance with applicable provisions of the Medi-Cal State Plan, the department has computed for the particular hospital.

(C) Where the computed amount referred to in subparagraph (A) for the particular hospital exceeds the OBRA 1993 payment limitation for the hospital, the amount computed under

subparagraph (A) shall be reduced to an amount equal to the OBRA 1993 payment limitation for the particular hospital. The amount so reduced shall be used for purposes of subparagraph (E). Except, however, with respect to a public hospital that, as of July 1, 1998, is part of a county-operated health system of three or more eligible hospitals licensed to the county, the amount as so reduced shall be increased by an amount equal to the amount paid or payable to the hospital under subdivision (af), and used for purposes of subparagraph (E).

(D) Where the computed amount referred to in subparagraph (A) for the particular hospital is equal to or less than the OBRA 1993 payment limitation for the hospital, the computed amount referred to in subparagraph (A) shall be used for purposes of subparagraph (E). Except, however, with respect to a public hospital that, as of July 1, 1998, is part of a county-operated health system of three or more eligible hospitals licensed to the county, the computed amount shall be increased by an amount equal to the amount paid or payable to the hospital under subdivision (af), and used for purposes of subparagraph (E).

(E) The amounts determined under subparagraphs (C) and (D) for all eligible hospitals shall be added together, yielding an aggregate sum. The aggregate sum shall be the unadjusted projected total payment adjustment program for the 1998–99 payment adjustment year, exclusive of any supplemental payment adjustments under subdivision (ah).

(2) The initial maximum size of the payment adjustment program for the 1998–99 payment adjustment program shall be set at one billion seven hundred fifty million dollars ($1,750,000,000), exclusive of any supplemental payment adjustments under subdivision (ah).

(3) (A) The department shall increase or decrease the amount determined for each eligible hospital under subparagraph (C) or (D) of paragraph (1), as applicable, by multiplying the amount by an identical percentage, yielding the hospital's tentative adjusted projected total payment adjustment amount for the 1998–99 payment adjustment year. The identical percentage figure to be used for this purpose shall be that percentage that is derived by dividing the amount set forth in paragraph (2) by the aggregate sum determined under subparagraph (E) of paragraph (1). Except, however, the amount determined for a hospital under subparagraph (C) or (D) of paragraph (1), as applicable, shall not be increased such that it would exceed the OBRA 1993 payment limitation for the hospital, and, where such would otherwise occur, the remaining amount that would have been allocated to the particular hospital shall be reallocated to all other hospitals (that have not reached their OBRA 1993 payment limitation) on a pro rata basis so that the aggregate sum of the tentative adjusted projected total payment adjustment amounts for all hospitals equals the amount set forth in paragraph (2).

(B) (i) With respect to a public hospital that, as of July 1, 1998, is part of a county-operated health system of three or more eligible hospitals licensed to the county, the amount determined under subparagraph (C) or (D) of paragraph (1), as applicable, shall be reduced by an amount equal to the amount paid or payable to the hospital under subdivision (af), prior to applying the OBRA 1993 payment limitation under subparagraph (A).

(ii) Notwithstanding clause (i), all other computations under subparagraph (A), including the determination of the hospital's pro rata share of any reallocations, shall be made as though the reduction described in clause (i) had not occurred.

(4) The tentative adjusted projected total payment adjustment amount computed for each eligible hospital under paragraph (3) shall be further adjusted as follows:

(A) (i) For each eligible hospital that meets the definition of a nonpublic-converted hospital as of July 1, 1998, the hospital's tentative adjusted projected total payment adjustment amount shall be multiplied by a "nonpublic-converted hospital adjustment factor." The applicable adjustment factor shall be that which is necessary to result for each such hospital in an amount equal to the amount used for the particular hospital under subparagraph (E) of paragraph (1).

(ii) The resulting product shall be the final adjusted projected total payment adjustment amount for the hospital for the 1998–99 payment adjustment year, which shall be paid to the hospital in accordance with paragraph (5).

(B) (i) For each eligible hospital that meets the definition of a converted hospital as of July 1, 1998, the hospital's tentative adjusted projected total payment adjustment amount shall be multiplied by a "converted hospital adjustment factor." The applicable adjustment factor shall be that which is necessary to result for each such hospital in an amount equal to: (I) the maximum number of the hospital's annualized Medi-Cal inpatient paid days determined under paragraph (2) of subdivision (*l*); multiplied by (II) the total per diem composite amount determined for the hospital, the calculation of such per diem composite amount being restricted by a maximum low-income number of 40 percent for the hospital, regardless if the hospital's low-income number would otherwise be higher. In no case shall the product of this calculation exceed the amount used for the particular hospital under subparagraph (E) of paragraph (1).

(ii) The resulting product shall be the final adjusted projected total payment adjustment amount for the hospital for the 1998–99 payment adjustment year, which shall be paid to the hospital in accordance with paragraph (5).

(C) (i) For each eligible hospital that meets the definition of a nonpublic hospital as of July 1, 1998, the hospital's tentative adjusted projected total payment adjustment amount shall be multiplied by

a "nonpublic hospital adjustment factor." The applicable adjustment factor shall be derived as follows:

(I) The tentative adjusted projected total payment adjustment amounts determined under paragraph (3) for each nonpublic hospital described above shall be added together.

(II) The amount identified in paragraph (2) shall be divided by 2.347. The resulting figure shall then be reduced by the sum of the amounts determined for all nonpublic-converted hospitals under clause (ii) of subparagraph (A) and the amounts determined for all converted hospitals under clause (ii) of subparagraph (B).

(III) The amount computed under subclause (II) shall be divided by 2, and the result thereof further reduced by the amount of thirty-seven million five hundred thousand dollars ($37,500,000).

(IV) The applicable adjustment factor shall be that ratio that results from dividing the amount derived in subclause (III) by the amount derived in subclause (I).

(ii) The resulting product shall be the final adjusted projected total payment adjustment amount for the hospital for the 1998–99 payment adjustment year, which shall be paid to the hospital in accordance with paragraph (5). Except, however, in no case shall the final adjusted projected total payment adjustment amount exceed the hospital's OBRA 1993 payment limitation, and, where such would otherwise occur, the remaining amount that would have been allocated to the particular hospital shall be reallocated to all other nonpublic hospitals (that have not reached their OBRA 1993 payment limitation) on a pro rata basis so that the aggregate sum of the final adjusted projected total payment adjustment amounts for all nonpublic hospitals equals the amount derived in subclause (III) of clause (i).

(D) (i) For each eligible hospital that meets the definition of a public hospital as of July 1, 1998, the hospital's tentative adjusted projected total payment adjustment amount shall be multiplied by a "public hospital adjustment factor." The applicable adjustment factor shall be derived as follows:

(I) The tentative adjusted projected total payment adjustment amounts determined under paragraph (3) for each public hospital described above shall be added together.

(II) The amount identified in paragraph (2) shall be reduced by the sum of the amounts determined for all nonpublic-converted hospitals under clause (ii) of subparagraph (A), the amounts determined for all converted hospitals under clause (ii) of subparagraph (B) and the amounts determined for all nonpublic hospitals under clause (ii) of subparagraph (C).

(III) The applicable adjustment factor shall be that ratio that results from dividing amount derived in subclause (II) by the amount derived in subclause (I).

(ii) The product determined for each hospital under clause (i) shall be further adjusted as follows:

(I) The product shall be reduced as necessary so as not to exceed the hospital's OBRA 1993 payment limitation.

(II) With respect to a public hospital that, as of July 1, 1998, is part of a county-operated health system of three or more eligible hospitals licensed to the county, the product shall, prior to the application of subclause (I), be reduced by an amount equal to the amount paid or payable to the hospital under subdivision (af).

(III) Any amounts that would otherwise have been allocated to a hospital but for the hospital's OBRA 1993 payment limitation as applied under subclause (I) shall be reallocated to all other public hospitals (that have not reached their OBRA 1993 payment limitation) on a pro rata basis. With respect to a public hospital described in subclause (II), such hospital's pro rata share of any such reallocated amounts shall be based on the product derived for the hospital under clause (i).

(IV) The amount determined for each hospital pursuant to subclause (I) and subclause (II), as applicable (including the reduction under subclause (II)), plus any reallocations to the hospital under subclause (III), shall be the final adjusted projected total payment adjustment amount for the hospital for the 1998–99 payment adjustment year, which shall be paid to the hospital in accordance with paragraph (5).

(5) The final adjusted projected total payment adjustment amount determined for each eligible hospital for the 1998–99 payment adjustment year shall be distributed as set forth below.

(A) With respect to the period July 1, 1998, through September 30, 1998, payment adjustment amounts shall be payable only to those eligible hospitals that, as of July 1, 1998, were not part of a county-operated health system of three or more eligible hospitals licensed to the county.

(i) The maximum amount of payment adjustments payable to eligible hospitals under this paragraph for the period of July 1, 1998, through September 30, 1998, shall be determined as follows:

(I) The maximum state disproportionate share hospitals allotment for California under the provisions of applicable federal medicaid rules shall be identified for the 1998 federal fiscal year. This maximum allotment is two billion one hundred seventeen million eight hundred ninety-nine thousand six hundred sixty-eight dollars ($2,117,899,668).

(II) The total amount of all payment adjustments under this section (exclusive of any payments under this subparagraph) applicable to the 1998 federal fiscal year, whether paid or payable, shall be determined. The applicability of payment adjustment amounts to the 1998 federal fiscal year shall be determined in accordance with federal medicaid rules, including Sections 447.297(d)(3) and 447.298 of Title 42 of the Code of Federal Regulations.

(III) The figure determined under subclause (II) shall be subtracted from the figure identified under subclause (I). The positive remainder shall be the maximum amount of payment adjustments payable with respect to the period July 1, 1998, through September 30, 1998, under this subparagraph.

(ii) With respect to an eligible hospital that, as of July 1, 1998, meets the definition of a nonpublic-converted hospital, the maximum amount payable for the period July 1, 1998, through September 30, 1998, shall be equal to the product of the final adjusted projected total payment adjustment amount determined for the hospital pursuant to paragraph (4), multiplied by a fraction that is computed as follows:

(I) The maximum amount derived in subclause (III) of clause (i) shall be increased by an amount equal to the total amount of payment adjustments paid or payable under subdivision (af).

(II) The figure derived in subclause (I) shall be divided by the amount specified in paragraph (2).

(iii) With respect to an eligible hospital that, as of July 1, 1998, meets the definition of a converted hospital, the maximum amount payable for the period July 1, 1998, through September 30, 1998, shall be equal to the product of the final adjusted projected total payment adjustment amount determined for the hospital pursuant to paragraph (4), multiplied by a fraction that is computed as follows:

(I) The maximum amount derived in subclause (III) of clause (i) shall be increased by an amount equal to the total amount of payment adjustments paid or payable under subdivision (af).

(II) The figure derived in subclause (I) shall be divided by the amount specified in paragraph (2).

(iv) With respect to an eligible hospital that, as of July 1, 1998, meets the definition of a nonpublic hospital, the maximum amount payable for the period July 1, 1998, through September 30, 1998, shall be equal to the product of the final adjusted projected total payment adjustment amount determined for the hospital pursuant to paragraph (4), multiplied by a fraction that is computed as follows:

(I) The maximum amount derived in subclause (III) of clause (i) shall be increased by an amount equal to the total amount of payment adjustments paid or payable under subdivision (af).

(II) The figure derived in subclause (I) shall be divided by the amount specified in paragraph (2).

(v) With respect to an eligible hospital that, as of July 1, 1998, meets the definition of a public hospital, the maximum amount payable for the period July 1, 1998, through September 30, 1998, shall be equal to the product of the final adjusted projected total payment adjustment amount determined for the hospital pursuant to paragraph (4), multiplied by a fraction that is computed as follows:

(I) The maximum amount derived in subclause (III) of clause (i) shall be reduced by the sum of the amounts determined for all nonpublic-converted hospitals under clause (ii), the amounts

determined for all converted hospitals under clause (iii) and the amounts determined for all nonpublic hospitals under clause (iv).

(II) The amounts computed under paragraph (4) with respect to all public hospitals that are subject to this subparagraph (A) shall be added together, yielding an aggregate sum.

(III) The figure derived in subclause (I) shall be divided by the aggregate sum derived in subclause (II).

(vi) The resulting product determined for each hospital pursuant to clauses (ii) through (v), as applicable, shall be distributed to the hospital in three equal installments, each payable as of the last day of each month from July 1998 through September 1998. However, no hospital shall receive an installment for any month in which the hospital does not remain in operation for the entire month. To the extent that any hospital is not entitled to receive an installment that otherwise would be payable but for the hospital's failure to remain in operation through the last day of a particular month, the amount that would have been paid to the hospital shall be redistributed among those hospitals within the same hospital group (as such groups are described in clauses (ii) through (v)) that remain in operation from July 1, 1998, through September 30, 1998, to be distributed on a pro rata basis. The redistributed amounts shall be payable as of September 30, 1998.

(B) (i) With respect to the period October 1, 1998, through June 30, 1999, payment adjustment amounts shall be payable to each eligible hospital in the amount equal to the final adjusted projected total payment adjustment amount determined for the hospital pursuant to paragraph (4), less any payment adjustments paid or payable to the hospital, or payment adjustments that would have been payable but for the hospital's failure to remain in operation for a particular month, under subparagraph (A). The payment adjustments shall be distributed in eight equal amounts, each payable as of the last day of each month from October 1998 through May 1999. However, no hospital shall receive an installment for any month in which the hospital does not remain in operation for the entire month.

(ii) To the extent that any hospital of either of the hospital types described in clause (iv) or (v) of subparagraph (A) is not entitled to receive an installment that otherwise would be payable but for the hospital's failure to remain in operation through the last day of a particular month, the amount that would have been paid to the hospital shall be redistributed among those hospitals of the same hospital type that remain in operation from October 1, 1998, through June 30, 1999, to be distributed on a pro rata basis. The redistributed amounts shall be payable as of June 30, 1999.

(iii) With respect to a public hospital that, as of July 1, 1998, is part of a county-operated health system of three or more eligible hospitals licensed to the county, the hospital's pro rata share of any reallocations under clause (ii) shall be based on the final adjusted projected total payment adjustment amount determined for the

hospital pursuant to paragraph (4), as increased by an amount equal to the amount paid or payable to the hospital under subdivision (af).

(6) Notwithstanding any other provision of law, for the 1998–99 payment adjustment year, no eligible hospital shall receive total payment adjustments in excess of the hospital's OBRA 1993 payment limitation as computed by the department pursuant to the Medi-Cal State Plan.

(7) The aggregate sum of the final adjusted projected total payment adjustment amounts computed under paragraph (4) for each eligible hospital shall be the maximum size of the payment adjustment program for the 1998–99 payment adjustment year, exclusive of the supplemental payment adjustments provided for under subdivision (ah).

(8) The department shall implement this subdivision only to the extent consistent with federal medicaid law and the Medi-Cal State Plan, and only to the extent that the department determines that federal financial participation is available.

(ah) (1) For the 1998–99 payment adjustment year, eligible hospitals that meet the requirements of this subdivision and that are in operation as of June 30, 1999, shall be eligible to receive a supplemental lump-sum payment adjustment, which shall be payable as a result of the facility being a disproportionate share hospital in operation as of that date, but only if the hospital has remained in operation for the period October 1, 1998, through June 30, 1999.

(2) The availability of supplemental lump-sum payment adjustments under this subdivision shall be determined as follows:

(A) The maximum state disproportionate share hospital allotment for California under the provisions of applicable federal medicaid rules shall be identified for the 1999 federal fiscal year. It is estimated that this amount will be two billion seventy-one million seven hundred seventy-four thousand nine hundred seventy-six dollars ($2,071,774,976).

(B) The total amount of all payment adjustment amounts under this section (exclusive of any payments under this subdivision) applicable to the 1999 federal fiscal year, whether paid or payable, shall be determined. The applicability of payment adjustment amounts to the 1999 federal fiscal year shall be determined in accordance with federal medicaid rules, including Sections 447.297(d)(3) and 447.298 of Title 42 of the Code of Federal Regulations.

(C) The figure determined under subparagraph (B) shall be subtracted from the figure identified under subparagraph (A). If the remainder is a positive figure, supplemental lump-sum payment adjustments shall be made under this subdivision in accordance with paragraph (3). The positive remainder shall be the maximum amount of supplemental lump-sum payment adjustments under this subdivision.

(3) (A) For purposes of supplemental lump-sum payment adjustments under this subdivision, only hospitals that can be categorized into either of the two groups specified in clauses (i) and (ii) below shall be eligible to receive the supplemental payment adjustments, and no hospital may qualify for more than one of the two groups. The following groups of hospitals shall be recognized:

(i) "Public hospitals," which shall include all eligible hospitals that, as of July 1, 1998, met the definition of a public hospital.

(ii) "Nonpublic hospitals," which shall include all eligible hospitals that, as of July 1, 1998, met the definition of a nonpublic hospital.

(B) The amount determined to be the maximum amount of supplemental lump-sum payment adjustments under subparagraph (C) of paragraph (2) shall first be allocated between the two groups of hospitals referred to in subparagraph (A) as follows:

(i) "Public hospitals": 76.01 percent of the maximum amount.

(ii) "Nonpublic hospitals": 23.99 percent of the maximum amount.

(C) The amount of funds allocated pursuant to subparagraph (B) to each of the particular groups of hospitals referred to in subparagraphs (A) and (B) shall then be distributed as supplemental lump-sum payment adjustments among the eligible hospitals within each particular group as follows:

(i) The department shall identify for each eligible hospital the total amount of payment adjustments under this section (exclusive of any payments under this subdivision) applicable to the 1998–99 payment adjustment year, whether paid or payable. The applicability of the payment adjustment amounts to this period of time shall be determined in accordance with federal medicaid rules, including Sections 447.297(d)(3) and 447.298 of Title 42 of the Code of Federal Regulations.

(ii) The amount identified for each hospital under clause (i) shall be compared to the OBRA 1993 payment limitation that, in accordance with applicable provisions of the Medi-Cal State Plan, the department has computed for the particular hospital for the 1998–99 payment adjustment year.

(iii) Where the amount computed under clause (i) for the particular hospital is equal to or exceeds the OBRA 1993 payment limitation for the hospital, the hospital shall not receive a supplemental lump-sum payment adjustment. Data regarding hospitals that have reached this limitation shall not be used for purposes of clauses (v) through (viii).

(iv) Where the amount computed under clause (i) for the particular hospital is less than the OBRA 1993 payment limitation for the hospital, the amount computed under clause (i) shall be used for purposes of clauses (v) through (viii). Except, however, with respect to a public hospital that, as of July 1, 1998, was part of a county-operated health system of three or more eligible hospitals licensed to the county, the amount computed under clause (i) plus the amounts paid or payable to the hospital pursuant to subdivision

(af) shall be used for purposes of clauses (v) through (vii), while the amount computed under clause (i) only shall be used for purposes of applying the limitation described in clause (viii).

(v) The figures determined under clause (iv) for each hospital in the particular group shall be added together to determine an aggregate total for each group.

(vi) The figures determined for each hospital under clause (iv) shall be divided by the aggregate total determined under clause (v) for the particular group, yielding a percentage figure for each hospital.

(vii) The percentage figure determined for each hospital under clause (vi) shall be applied to the maximum portion of the funds allocated to the particular group under subparagraph (B), to determine the hospital's pro rata share of the supplemental lump-sum payment adjustments. Except, however, in the case of a nonpublic hospital that, as of July 1, 1998, met the definition of a children's hospital, such pro rata share otherwise determined shall be multiplied by a factor of 1.09, yielding a modified pro rata share. The pro rata share for the other nonpublic hospitals shall be reduced accordingly, yielding a modified pro rata share, so that the maximum portion of the funds allocated to the nonpublic hospitals group will not be exceeded. The pro rata share or modified pro rata share, as applicable, for each hospital, as computed under this clause, shall also be used for all purposes relating to descending pro rata distributions under clause (viii).

(viii) In no event shall a hospital receive supplemental lump-sum payment adjustment amounts in excess of the difference between the OBRA 1993 payment limitation for the hospital and the amount computed for the hospital under clause (i). Any supplemental lump-sum payment adjustment amount, or portion thereof, that otherwise would have been payable under this paragraph to a hospital, but that is barred by this limitation, shall be distributed on a descending pro rata basis to those hospitals within the same group.

(D) The department shall make interim and final payments of the supplemental lump-sum payment adjustments to hospitals on or before August 15, 1999.

(4) The department shall implement this subdivision only to the extent consistent with federal medicaid law and the Medi-Cal State Plan, and only to the extent that the department determines that federal financial participation is available.

(ai) Notwithstanding any other provision of law, no payment adjustment amounts shall be payable in connection with the period of July 1 through September 30 of the 1999–2000 payment adjustment year. The payment adjustment program with respect to the period October 1, 1999, through June 30, 2000, shall be structured as set forth below and in subdivision (aj).

(1) (A) The department shall compute the projected total payment adjustment amounts for all eligible hospitals for the

1999–2000 payment adjustment year, by determining for each eligible hospital its total per diem composite amount and multiplying that figure by the maximum number of the hospital's Medi-Cal inpatient paid days determined under paragraph (2) of subdivision (*l*). For purposes of this subparagraph, such determinations shall be without regard to the OBRA 1993 payment limitations.

(B) The computed amount referred to in subparagraph (A) for each hospital shall be compared to the OBRA 1993 payment limitation that, in accordance with applicable provisions of the Medi-Cal State Plan, the department has computed for the particular hospital.

(C) Where the computed amount referred to in subparagraph (A) for the particular hospital exceeds the OBRA 1993 payment limitation for the hospital, the amount computed under subparagraph (A) shall be reduced to an amount equal to the OBRA 1993 payment limitation for the particular hospital. The amount so reduced shall be used for purposes of subparagraph (E).

(D) Where the computed amount referred to in subparagraph (A) for the particular hospital is equal to or less than the OBRA 1993 payment limitation for the hospital, the computed amount referred to in subparagraph (A) shall be used for purposes of subparagraph (E).

(E) The amounts determined under subparagraphs (C) and (D) for all eligible hospitals shall be added together, yielding an aggregate sum. The aggregate sum shall be the unadjusted projected total payment adjustment program for the period of October 1, 1999, through June 30, 2000, exclusive of any supplemental payment adjustments under subdivision (aj).

(2) The initial maximum size of the payment adjustment program for the period October 1, 1999, through June 30, 2000, shall be set at one billion seven hundred fifty million dollars ($1,750,000,000), exclusive of any supplemental payment adjustments under subdivision (aj).

(3) The department shall increase or decrease the amount determined for each eligible hospital under subparagraph (C) or (D) of paragraph (1), as applicable, by multiplying the amount by an identical percentage, yielding the hospital's tentative adjusted projected total payment adjustment amount for the period October 1, 1999, through June 30, 2000. The identical percentage figure to be used for this purpose shall be that percentage that is derived by dividing the amount set forth in paragraph (2) by the aggregate sum determined under subparagraph (E) of paragraph (1). Except, however, the amount determined for a hospital under subparagraphs (C) or (D) of paragraph (1) shall not be increased such that it would exceed the OBRA 1993 payment limitation for the hospital, and, where such would otherwise occur, the remaining amount that would have been allocated to the particular hospital shall be reallocated to all other hospitals (that have not reached their OBRA

1993 payment limitation) on a pro rata basis so that the aggregate sum of the tentative adjusted projected total payment adjustment amount for all hospitals equals the amounts set forth in paragraph (2).

(4) The tentative adjusted projected total payment adjustment amount computed for each eligible hospital under paragraph (3) shall be further adjusted as follows:

(A) (i) For each eligible hospital that meets the definition of a nonpublic-converted hospital as of July 1, 1999, the hospital's tentative adjusted projected total payment adjustment amount shall be multiplied by a "nonpublic-converted hospital adjustment factor." The applicable adjustment factor shall be that which is necessary to result in an amount for each such hospital equal to the amount used for the particular hospital under subparagraph (E) of paragraph (1).

(ii) The resulting product shall be the final adjusted projected total payment adjustment amount for the hospital for the period October 1, 1999, through June 30, 2000, which shall be paid to the hospital in accordance with paragraph (5).

(B) (i) For each eligible hospital that meets the definition of a converted hospital as of July 1, 1999, the hospital's tentative adjusted projected total payment adjustment amount shall be multiplied by a "converted hospital adjustment factor." The applicable adjustment factor shall be that which is necessary to result for each such hospital in an amount equal to: (I) the maximum number of the hospital's annualized Medi-Cal inpatient paid days determined under paragraph (2) of subdivision (*l*); multiplied by (II) the total per diem composite amount determined for the hospital, the calculation of such per diem composite amount being restricted by a maximum low-income number of 40 percent for the hospital, regardless if the hospital's low-income number would otherwise be higher. In no case shall the product of this calculation exceed the amount used for the particular hospital under subparagraph (E) of paragraph (1).

(ii) The resulting product shall be the final adjusted projected total payment adjustment amount for the hospital for the period October 1, 1999, through June 30, 2000, which shall be paid to the hospital in accordance with paragraph (5).

(C) (i) For each eligible hospital that meets the definition of a nonpublic hospital as of July 1, 1999, the hospital's tentative adjusted projected total payment adjustment amount shall be multiplied by a "nonpublic hospital adjustment factor." The applicable adjustment factor shall be derived as follows:

(I) The tentative adjusted projected total payment adjustment amounts determined under paragraph (3) for each nonpublic hospital shall be added together.

(II) The amount identified in paragraph (2) shall be divided by 2.240. The resulting figure shall then be reduced by the sums of the amounts determined for all nonpublic-converted hospitals under

clause (ii) of subparagraph (A) and all converted hospitals under clause (ii) of subparagraph (B).

(III) The amount computed under subclause (II) shall be divided by 2, and the result thereof further reduced by the amount of thirty-seven million five hundred thousand dollars ($37,500,000).

(IV) The applicable adjustment factor shall be that ratio that results from dividing the amount derived in subclause (III) by the amount derived in subclause (I).

(ii) The resulting product shall be the final adjusted projected total payment adjustment amount for the hospital for the period October 1, 1999, through June 30, 2000, which shall be paid to the hospital in accordance with paragraph (5). Except, however, in no case shall the final adjusted projected total payment adjustment amount exceed the hospital's OBRA 1993 payment limitation, and, where such would otherwise occur, the remaining amount that would have been allocated to the particular hospital shall be reallocated to all other nonpublic hospitals (that have not reached their OBRA 1993 payment limitation) on a pro rata basis so that the aggregate sum of the final adjusted projected total payment adjustment amounts for all nonpublic hospitals equals the amount derived in subclause (III) of clause (i).

(D) (i) For each eligible hospital that meets the definition of a public hospital as of July 1, 1999, the hospital's tentative adjusted projected total payment adjustment amount shall be multiplied by a "public hospital adjustment factor." The applicable adjustment factor shall be derived as follows:

(I) The tentative adjusted projected total payment adjustment amounts determined under paragraph (3) for each public hospital described above shall be added together.

(II) The amount identified in paragraph (2) shall be reduced by the sums of the amounts determined for all nonpublic-converted hospitals under clause (ii) of subparagraph (A) and all converted hospitals under clause (ii) of subparagraph (B), and the sum of the amounts determined for all nonpublic hospitals under clause (ii) of subparagraph (C).

(III) The applicable adjustment factor shall be that ratio that results from dividing the amount derived in subclause (II) by the amount derived in subclause (I).

(ii) The resulting product shall be the final adjusted projected total payment adjustment amount for the hospital for the period October 1, 1999, through June 30, 2000, which shall be paid to the hospital in accordance with paragraph (5). Except, however, in no case shall the final adjusted projected total payment adjustment amount exceed the hospital's OBRA 1993 payment limitation, and, where such would otherwise occur, the remaining amount that would have been allocated to the particular hospital shall be reallocated to all other public hospitals (that have not reached their OBRA 1993 payment limitation) on a pro rata basis so that the

aggregate sum of the final adjusted projected total payment adjustment amounts for all public hospitals equals the amount derived in subclause (II) of clause (i).

(5) (A) The final adjusted projected total payment adjustment amount determined for each eligible hospital for the period October 1, 1999, through June 30, 2000, shall be distributed to the hospital in 8 equal installments, each payable as of the last day of each month from October 1999 through May 2000. However, no hospital shall receive an installment for any month in which the hospital does not remain in operation for the entire month.

(B) To the extent that any hospital of either of the hospital types described in subparagraph (C) or (D) of paragraph (4) is not entitled to receive an installment that otherwise would be payable but for the hospital's failure to remain in operation through the last day of a particular month, the amount that would have been paid to the hospital shall be redistributed among those hospitals of the same hospital type that remain in operation from October 1, 1999, through June 30, 2000, to be distributed on a pro rata basis. The redistributed amounts shall be payable as of June 30, 2000.

(6) Notwithstanding any other provision of law, with respect to a hospital that meets the definition of a public hospital as of July 1, 1999, the provisions of paragraphs (1) through (5) shall initially be implemented for the period October 1, 1999, through December 31, 1999, without application of the OBRA 1993 payment limitations. As of January 1, 2000, the department shall recalculate all determinations under paragraphs (1) through (5) for the payment adjustment year, taking into account the hospital's OBRA 1993 payment limitation as determined pursuant to federal medicaid law in existence as of January 1, 2000, and adjust, as necessary, the monthly payment installments from January 2000 through May 2000 to take into account any modifications to the recalculated amounts payable for the period October 1999 through December 1999 as may arise from the application of this paragraph.

(7) Notwithstanding any other provision of law, for the entire 1999–2000 payment adjustment year, no eligible hospital shall receive total payment adjustments in excess of the hospital's OBRA 1993 payment limitation as computed by the department pursuant to the Medi-Cal State Plan.

(8) The aggregate sum of the final adjusted projected total payment adjustment amounts computed under paragraph (4) for each eligible hospital for the period October 1, 1999, through June 30, 2000, shall be the maximum size of the payment adjustment program for the entire 1999–2000 payment adjustment year, exclusive of the supplemental payment adjustments provided for under subdivision (aj).

(9) The department shall implement this subdivision only to the extent consistent with federal medicaid law and the Medi-Cal State

Plan, and only to the extent that the department determines that federal financial participation is available.

(aj) (1) For the 1999–2000 payment adjustment year, eligible hospitals that meet the requirements of this subdivision and that are in operation as of June 30, 2000, shall be eligible to receive a supplemental lump-sum payment adjustment, which shall be payable as a result of the facility being a disproportionate share hospital in operation as of that date, but only if the hospital has remained in operation for the period October 1, 1999, through June 30, 2000.

(2) The availability of supplemental lump-sum payment adjustments under this subdivision shall be determined as follows:

(A) The maximum state disproportionate share hospital allotment for California under the provisions of applicable federal medicaid rules shall be identified for the 2000 federal fiscal year.

(B) The total amount of all payment adjustment amounts under this section (exclusive of any payments under this subdivision) applicable to the 2000 federal fiscal year, whether paid or payable, shall be determined. The applicability of payment adjustment amounts to the 2000 federal fiscal year shall be determined in accordance with federal medicaid rules, including Sections 447.297(d)(3) and 447.298 of Title 42 of the Code of Federal Regulations.

(C) (i) The figure determined under subparagraph (B) shall be subtracted from the figure identified under subparagraph (A). If the remainder is a positive figure, supplemental lump-sum payment adjustments shall be made under this subdivision in accordance with this subparagraph and paragraph (3).

(ii) The positive remainder derived under clause (i) shall be the maximum amount of supplemental lump-sum payment adjustments under this subdivision where: (I) effective for at least the 1999–2000 payment adjustment year, federal legislation is enacted regarding the application of the OBRA 1993 payment limitation with provisions substantially similar in effect to Section 4721(e) of the federal Balanced Budget Act of 1997 (P.L. 105-33) as such related to the 1997–98 and 1998–99 payment adjustment years; and (II) all necessary amendments to the Medi-Cal State Plan implementing such federal legislation as it relates to the 1999–2000 payment adjustment year have been approved by the federal Health Care Financing Administration.

(iii) If any element set forth in clause (ii) is not satisfied, the maximum amount of supplemental lump-sum payment adjustments under this subdivision shall be the lesser of: (I) the positive remainder derived in clause (i); or (II) one hundred six million dollars ($106,000,000).

(3) (A) For purposes of supplemental lump-sum payment adjustments under this subdivision, only hospitals that can be categorized into either of the two groups specified in clauses (i) and

(ii) below shall be eligible to receive the supplemental payment adjustments, and no hospital may qualify for more than one of the two groups. The following groups of hospitals shall be recognized:

(i) "Public hospitals," which shall include all eligible hospitals that, as of July 1, 1999, met the definition of a public hospital.

(ii) "Nonpublic hospitals," which shall include all eligible hospitals that, as of July 1, 1999, met the definition of a nonpublic hospital.

(B) The amount determined to be the maximum amount of supplemental lump-sum payment adjustments under subparagraph (C) of paragraph (2) shall first be allocated between the two groups of hospitals referred to in subparagraph (A) as follows:

(i) "Public hospitals": 72.32 percent of the maximum amount.

(ii) "Nonpublic hospitals": 27.68 percent of the maximum amount.

(C) The amount of funds allocated pursuant to subparagraph (B) to each of the particular groups of hospitals referred to in subparagraphs (A) and (B) shall then be distributed as supplemental lump-sum payment adjustments among the eligible hospitals within each particular group as follows:

(i) The department shall identify for each eligible hospital the total amount of payment adjustments under this section (exclusive of any payments under this subdivision) applicable to the 1999–2000 payment adjustment year, whether paid or payable. The applicability of the payment adjustment amounts to this period of time shall be determined in accordance with federal medicaid rules, including Sections 447.297(d)(3) and 447.298 of Title 42 of the Code of Federal Regulations.

(ii) The amount identified for each hospital under clause (i) shall be compared to the OBRA 1993 payment limitation that, in accordance with applicable provisions of the Medi-Cal State Plan, the department has computed for the particular hospital for the 1999-2000 payment adjustment year. For all purposes under this subdivision, calculations of the OBRA 1993 payment limitations for public hospitals shall not be performed prior to January 1, 2000, as referred to in paragraph (6) of subdivision (ai).

(iii) Where the amount computed under clause (i) for the particular hospital is equal to or exceeds the OBRA 1993 payment limitation for the hospital, the hospital shall not receive a supplemental lump-sum payment adjustment. Data regarding hospitals that have reached this limitation shall not be used for purposes of clauses (v) through (viii).

(iv) Where the amount computed under clause (i) for the particular hospital is less than the OBRA 1993 payment limitation for the hospital, the amount computed under clause (i) shall be used for purposes of clauses (v) through (viii).

(v) The figures determined under clause (iv) for each hospital in the particular group shall be added together to determine an aggregate total for each group.

(vi) The figures determined for each hospital under clause (iv) shall be divided by the aggregate total determined under clause (v) for the particular group, yielding a percentage figure for each hospital.

(vii) The percentage figure determined for each hospital under clause (vi) shall be applied to the maximum portion of the funds allocated to the particular group under subparagraph (B), to determine the hospital's pro rata share of the supplemental lump-sum payment adjustments. Except, however, in the case of a nonpublic hospital that, as of July 1, 1999, met the definition of a children's hospital, such pro rata share otherwise determined shall be multiplied by a factor of 1.09, yielding a modified pro rata share. The pro rata share for the other nonpublic hospitals shall be reduced accordingly, yielding a modified pro rata share, so that the maximum portion of the funds allocated to the nonpublic hospitals group will not be exceeded. The pro rata share or modified pro rata share, as applicable, for each hospital, as computed under this clause, shall also be used for all purposes relating to descending pro rata distributions under clause (viii).

(viii) In no event shall a hospital receive supplemental lump-sum payment adjustment amounts in excess of the difference between the OBRA 1993 payment limitation for the hospital and the amount computed for the hospital under clause (i). Any supplemental lump-sum payment adjustment amount, or portion thereof, that otherwise would have been payable under this paragraph to a hospital, but that is barred by this limitation, shall be distributed on a descending pro rata basis to those hospitals within the same group.

(D) The department shall make interim and final payments of the supplemental lump-sum payment adjustments to hospitals on or before August 15, 2000.

(4) The department shall implement this subdivision only to the extent consistent with federal medicaid law and the Medi-Cal State Plan, and only to the extent that the department determines that federal financial participation is available.

(ak) (1) Notwithstanding any other provision of law, except as set forth in paragraph (2), with respect to the 2000–01 payment adjustment year and subsequent payment adjustment years, no payment adjustment amounts shall be payable in connection with the period from July 1 through September 30 of each such payment adjustment year.

(2) To the extent that any portion of the maximum state disproportionate share hospital allotment for California for the 2000 federal fiscal year or any subsequent federal fiscal year is not otherwise expended under the program with respect to the period from October 1 through June 30 of the particular federal fiscal year, the remaining portion of the allotment shall be expended with respect to the period from July 1 through September 30 of the particular federal fiscal year.

(3) With respect to the 2000–01 payment adjustment year and subsequent payment adjustment years, the department shall take all reasonable steps as are necessary to align the program with the federal allotment for the period from October 1 through June 30 of each such payment adjustment year.

SEC. 2. Section 14163 of the Welfare and Institutions Code is amended to read:

14163. (a) For purposes of this section, the following definitions shall apply:

(1) "Public entity" means a county, a city, a city and county, the State of California, the University of California, a local health care district, a local health authority, or any other political subdivision of the state.

(2) "Hospital" means a health facility that is licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code to provide acute inpatient hospital services, and includes all components of the facility.

(3) "Disproportionate share hospital" means a hospital providing acute inpatient services to Medi-Cal beneficiaries that meets the criteria for disproportionate share status relating to acute inpatient services set forth in Section 14105.98.

(4) "Disproportionate share list" means the annual list of disproportionate share hospitals for acute inpatient services issued by the department pursuant to Section 14105.98.

(5) "Fund" means the Medi-Cal Inpatient Payment Adjustment Fund.

(6) "Eligible hospital" means, for a particular state fiscal year, a hospital on the disproportionate share list that is eligible to receive payment adjustment amounts under Section 14105.98 with respect to that state fiscal year.

(7) "Transfer year" means the particular state fiscal year during which, or with respect to which, public entities are required by this section to make an intergovernmental transfer of funds to the Controller.

(8) "Transferor entity" means a public entity that, with respect to a particular transfer year, is required by this section to make an intergovernmental transfer of funds to the Controller.

(9) "Transfer amount" means an amount of intergovernmental transfer of funds that this section requires for a particular transferor entity with respect to a particular transfer year.

(10) "Intergovernmental transfer" means a transfer of funds from a public entity to the state, that is local government financial participation in Medi-Cal pursuant to the terms of this section.

(11) "Licensee" means an entity that has been issued a license to operate a hospital by the department.

(12) "Annualized Medi-Cal inpatient paid days" means the total number of Medi-Cal acute inpatient hospital days, regardless of dates of service, for which payment was made by or on behalf of the

department to a hospital, under present or previous ownership, during the most recent calendar year ending prior to the beginning of a particular transfer year, including all Medi-Cal acute inpatient covered days of care for hospitals that are paid on a different basis than per diem payments.

(13) "Medi-Cal acute inpatient hospital day" means any acute inpatient day of service attributable to patients who, for those days, were eligible for medical assistance under the California state plan, including any day of service that is reimbursed on a basis other than per diem payments.

(14) "OBRA 1993 payment limitation" means the hospital-specific limitation on the total annual amount of payment adjustments to each eligible hospital under the payment adjustment program that can be made with federal financial participation under Section 1396r-4(g) of Title 42 of the United States Code as implemented pursuant to the Medi-Cal State Plan.

(b) The Medi-Cal Inpatient Payment Adjustment Fund is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, the fund shall be continuously appropriated to, and under the administrative control of, the department for the purposes specified in subdivision (d). The fund shall consist of the following:

(1) Transfer amounts collected by the Controller under this section, whether submitted by transferor entities pursuant to applicable provisions of this section or obtained by offset pursuant to subdivision (j).

(2) Any other intergovernmental transfers deposited in the fund, as permitted by Section 14164.

(3) Any interest that accrues with respect to amounts in the fund.

(c) Moneys in the fund, which shall not consist of any state general funds, shall be used as the source for the nonfederal share of payments to hospitals pursuant to Section 14105.98. Moneys shall be allocated from the fund by the department and matched by federal funds in accordance with customary Medi-Cal accounting procedures, and used to make payments pursuant to Section 14105.98.

(d) Except as otherwise provided in Section 14105.98 or in any provision of law appropriating a specified sum of money to the department for administering this section and Section 14105.98, moneys in the fund shall be used only for the following:

(1) Payments to hospitals pursuant to Section 14105.98.

(2) Transfers to the Health Care Deposit Fund as follows:

(A) In the amount of two hundred thirty-nine million seven hundred fifty-seven thousand six hundred ninety dollars ($239,757,690) for the 1994–95 and 1995–96 fiscal years.

(B) In the amount of two hundred twenty-nine million seven hundred fifty-seven thousand six hundred ninety dollars ($229,757,690) for the 1996–97 fiscal year.

(C) In the amount of one hundred fifty-four million seven hundred fifty-seven thousand six hundred ninety dollars ($154,757,690) for the 1997–98 fiscal year and each fiscal year thereafter.

(D) The transfers from the fund shall be made in six equal monthly installments to the Medi-Cal local assistance appropriation item (Item 4260-101-001 of the annual Budget Act) in support of Medi-Cal expenditures. The first installment shall accrue in October of each transfer year, and all other installments shall accrue monthly thereafter from November through March.

(e) For the 1991–92 state fiscal year, the department shall determine, no later than 70 days after the enactment of this section, the transferor entities for the 1991–92 transfer year. To make this determination, the department shall utilize the disproportionate share list for the 1991–92 fiscal year issued by the department pursuant to paragraph (1) of subdivision (f) of Section 14105.98. The department shall identify each eligible hospital on the list for which a public entity is the licensee as of July 1, 1991. The public entity that is the licensee of each identified eligible hospital shall be a transferor entity for the 1991–92 transfer year.

(f) The department shall determine, no later than 70 days after the enactment of this section, the transfer amounts for the 1991–92 transfer year.

The transfer amounts shall be determined as follows:

(1) The eligible hospitals for 1991–92 shall be identified. For each hospital, the applicable total per diem payment adjustment amount under Section 14105.98 for the 1991–92 transfer year shall be computed. This amount shall be multiplied by 80 percent of the eligible hospital's annualized Medi-Cal inpatient paid days as determined from all Medi-Cal paid claims records available through April 1, 1991. The products of these calculations for all eligible hospitals shall be added together to determine an aggregate sum for the 1991–92 transfer year.

(2) The eligible hospitals for 1991–92 involving transferor entities as licensees shall be identified. For each hospital, the applicable total per diem payment adjustment amount under Section 14105.98 for the 1991–92 transfer year shall be computed. This amount shall be multiplied by 80 percent of the eligible hospital's annualized Medi-Cal inpatient paid days as determined from all Medi-Cal paid claims records available through April 1, 1991. The products of these calculations for all eligible hospitals with transferor entities as licensees shall be added together to determine an aggregate sum for the 1991–92 transfer year.

(3) The aggregate sum determined under paragraph (1) shall be divided by the aggregate sum determined under paragraph (2), yielding a factor to be utilized in paragraph (4).

(4) The factor determined in paragraph (3) shall be multiplied by the amount determined for each hospital under paragraph (2). The

product of this calculation for each hospital in paragraph (2) shall be divided by 1.771, yielding a transfer amount for the particular transferor entity for the transfer year.

(g) For the 1991–92 transfer year, the department shall notify each transferor entity in writing of its applicable transfer amount or amounts.

(h) For the 1992–93 transfer year and subsequent transfer years, transfer amounts shall be determined in the same procedural manner as set forth in subdivision (f), except:

(1) The department shall use all of the following:

(A) The disproportionate share list applicable to the particular transfer year to determine the eligible hospitals.

(B) The payment adjustment amounts calculated under Section 14105.98 for the particular transfer year. These amounts shall take into account any projected or actual increases or decreases in the size of the payment adjustment program as are required under Section 14105.98 for the particular year in question, including any decreases resulting from the application of the OBRA 1993 payment limitation. The department may issue interim, revised, and supplemental transfer requests as necessary and appropriate to address changes in payment adjustment levels that occur under Section 14105.98. All transfer requests, or adjustments thereto, issued to transferor entities by the department shall meet the requirements set forth in subdivision (i).

(C) Data regarding annualized Medi-Cal inpatient paid days for the most recent calendar year ending prior to the beginning of the particular transfer year, as determined from all Medi-Cal paid claims records available through April 1 preceding the particular transfer year.

(D) The status of public entities as licensees of eligible hospitals as of July 1 of the particular transfer year.

(E) For the 1993–94 transfer year and subsequent transfer years, the divisor to be used for purposes of the calculation referred to in paragraph (4) of subdivision (f) shall be determined by the department. The divisor shall be calculated to ensure that the appropriate amount of transfers from transferor entities are received into the fund to satisfy the requirements of Section 14105.98, exclusive of the amounts described in paragraph (2) of this subdivision, and to satisfy the requirements of paragraph (2) of subdivision (d), for the particular transfer year. For the 1993–94 transfer year, the divisor shall be 1.742.

(F) The following provisions shall apply for certain transfer amounts relating to nonsupplemental payments under Section 14105.98:

(i) For the 1998–99 transfer year, transfer amounts shall be determined as though the payment adjustment amounts arising pursuant to subdivision (ag) of Section 14105.98 were increased by

the amounts paid or payable pursuant to subdivision (af) of Section 14105.98.

(ii) Any transfer amounts paid by a transferor entity pursuant to subparagraph (C) of paragraph (2) shall serve as credit for the particular transferor entity against an equal amount of its transfer obligation for the 1998–99 transfer year.

(iii) For the 1999–2000 transfer year, transfer amounts shall be determined as though the amount to be transferred to the Health Care Deposit Fund, as referred to in paragraph (2) of subdivision (d), were reduced by 28 percent.

(2) (A) Except as provided in subparagraphs (B), (C), and (D), for the 1993–94 transfer year and subsequent transfer years, transfer amounts shall be increased for the particular transfer year in the amounts necessary to fund the nonfederal share of the total supplemental payment adjustment amounts of all types that arise under Section 14105.98. These increases shall be paid only by those transferor entities that are licensees of hospitals that are projected to receive some or all of the particular supplemental payments, and the increases shall be paid by the transferor entities on a pro rata basis in connection with the particular supplemental payments. For purposes of this paragraph, supplemental payment adjustment amounts shall be deemed to arise for the particular transfer year as of the date specified in Section 14105.98. Transfer amounts to fund the nonfederal share of the payments shall be paid for the particular transfer year within 20 days after the department notifies the transferor entity in writing of the additional transfer amount to be paid.

(B) For the 1995–96 transfer year, the nonfederal share of the secondary supplemental payment adjustments described in paragraph (9) of subdivision (y) of Section 14105.96 shall be funded as follows:

(i) Ninety-nine percent of the nonfederal share shall be funded by a transfer from the University of California.

(ii) One percent of the nonfederal share shall be funded by transfers from those public entities that are the licensees of the hospitals included in the "other public hospitals" group referred to in clauses (ii) and (iii) of subparagraph (B) of paragraph (9) of subdivision (y) of Section 14105.98. The transfer responsibilities for this 1 percent shall be allocated to the particular public entities on a pro rata basis, based on a formula or formulae customarily used by the department for allocating transfer amounts under this section. The formula or formulae shall take into account, through reallocation of transfer amounts as appropriate, the situation of hospitals whose secondary supplemental payment adjustments are restricted due to the application of the limitation set forth in clause (v) of subparagraph (B) of paragraph (9) of subdivision (y) of Section 14105.98.

(iii) All transfer amounts under this subparagraph shall be paid by the particular transferor entities within 30 days after the department notifies the transferor entity in writing of the transfer amount to be paid.

(C) For the 1997–98 transfer year, transfer amounts to fund the nonfederal share of the supplemental payment adjustments described in subdivision (af) of Section 14105.98 shall be funded by a transfer from the County of Los Angeles.

(D) (i) For the 1998–99 transfer year, transfer amounts to fund the nonfederal share of the supplemental payment adjustment amounts arising under subdivision (ah) of Section 14105.98 shall be increased as set forth in clause (ii).

(ii) The transfer amounts otherwise calculated to fund the supplemental payment adjustments referred to in clause (i) shall be increased on a pro rata basis by an amount equal to 28 percent of the amount to be transferred to the Health Care Deposit Fund for the 1999–2000 fiscal year, as referred to in paragraph (2) of subdivision (d).

(3) The department shall prepare preliminary analyses and calculations regarding potential transfer amounts, and potential transferor entities shall be notified by the department of estimated transfer amounts as soon as reasonably feasible regarding any particular transfer year. Written notices of transfer amounts shall be issued by the department as soon as possible with respect to each transfer year. All state agencies shall take all necessary steps in order to supply applicable data to the department to accomplish these tasks. The Office of Statewide Health Planning and Development shall provide to the department quarterly access to the edited and unedited confidential patient discharge data files for all Medi-Cal eligible patients. The department shall maintain the confidentiality of that data to the same extent as is required of the Office of Statewide Health Planning and Development. In addition, the Office of Statewide Health Planning and Development shall provide to the department, not later than March 1 of each year, the data specified by the department, as the data existed on the statewide data base file as of February 1 of each year, from all of the following:

(A) Hospital annual disclosure reports, filed with the Office of Statewide Health Planning and Development pursuant to Section 443.31 or 128735 of the Health and Safety Code, for hospital fiscal years that ended during the calendar year ending 13 months prior to the applicable February 1.

(B) Annual reports of hospitals, filed with the Office of Statewide Health Planning and Development pursuant to Section 439.2 or 127285 of the Health and Safety Code, for the calendar year ending 13 months prior to the applicable February 1.

(C) Hospital patient discharge data reports, filed with the Office of Statewide Health Planning and Development pursuant to subdivision (g) of Section 443.31 or 128735 of the Health and Safety

Code, for the calendar year ending 13 months prior to the applicable February 1.

(D) Any other materials on file with the Office of Statewide Health Planning and Development.

(4) Transfer amounts calculated by the department may be increased or decreased by a percentage amount consistent with the Medi-Cal state plan.

(5) For the 1993–94 fiscal year, the transfer amount that would otherwise be required from the University of California shall be increased by fifteen million dollars ($15,000,000).

(6) Notwithstanding any other provision of law, except for subparagraph (D) of paragraph (2), the total amount of transfers required from the transferor entities for any particular transfer year shall not exceed the sum of the following:

(A) The amount needed to fund the nonfederal share of all payment adjustment amounts applicable to the particular payment adjustment year as calculated under Section 14105.98. Included in the calculations for this purpose shall be any decreases in the program as a whole, and for individual hospitals, that arise due to the provisions of Section 1396r-4(f) or (g) of Title 42 of the United States Code.

(B) The amount needed to fund the transfers to the Health Care Deposit Fund, as referred to in subdivision (d).

(7) (A) Except as provided in subparagraphs (B) and (C) and in paragraph (2) of subdivision (j), and except for a prudent reserve not to exceed two million dollars ($2,000,000) in the Medi-Cal Inpatient Payment Adjustment Fund, any amounts in the fund, including interest that accrues with respect to the amounts in the fund, that are not expended, or estimated to be required for expenditure, under Section 14105.98 with respect to a particular transfer year shall be returned on a pro rata basis to the transferor entities for the particular transfer year within 120 days after the department determines that the funds are not needed for an expenditure in connection with the particular transfer year.

(B) The department shall determine the interest amounts that have accrued in the fund from its inception through June 30, 1995, and, no later than January 1, 1996, shall distribute these interest amounts to transferor entities:

(C) With respect to those particular amounts in the fund resulting solely from the provisions of subparagraph (D) of paragraph (2), the department shall determine by September 30, 1999, whether these particular amounts exceed 28 percent of the amount to be transferred to the Health Care Deposit Fund for the 1999–2000 fiscal year, as referred to in paragraph (2) of subdivision (d). Any excess amount so determined shall be returned to the particular transferor entities on a pro rata basis no later than October 31, 1999.

(D) Regarding any funds returned to a transferor entity under subparagraph (A) or (C), or interest amounts distributed to a transferor entity under subparagraph (B), the department shall

provide to the transferor entity a written statement that explains the basis for the particular return or distribution of funds and contains the general calculations used by the department in determining the amount of the particular return or distribution of funds.

(i) (1) For the 1991–92 transfer year, each transferor entity shall pay its transfer amount or amounts to the Controller, for deposit in the fund, in eight equal installments.

(2) (A) Except as provided in subparagraphs (B) and (C), for the 1992–93 transfer year and subsequent transfer years, each transferor entity shall pay its transfer amount or amounts to the Controller, for deposit in the fund, in eight equal installments. However, for the 1997–98 and subsequent transfer years, each transferor entity shall pay its transfer amount or amounts to the Controller, for deposit in the fund, in the form of periodic installments according to a timetable established by the department. The timetable shall be structured to effectuate, on a reasonable basis, the prompt distribution of all nonsupplemental payment adjustments under Section 14105.98, and transfers to the Health Care Deposit Fund under subdivision (d).

(B) For the 1994–95 transfer year, each transferor entity shall pay its transfer amount or amounts to the Controller, for deposit in the fund, in five equal installments.

(C) For the 1995–96 transfer year, each transferor entity shall pay its transfer amount or amounts to the Controller, for deposit in the fund, in five equal installments.

(D) Except as otherwise specifically provided, subparagraphs (A) to (C), inclusive, shall not apply to increases in transfer amounts described in paragraph (2) of subdivision (h) or to additional transfer amounts described in subdivision (o).

(E) All requests for transfer payments, or adjustments thereto, issued by the department shall be in writing and shall include (i) an explanation of the basis for the particular transfer request or transfer activity, (ii) a summary description of program funding status for the particular transfer year, and (iii) the general calculations used by the department in connection with the particular transfer request or transfer activity.

(3) A transferor entity may use any of the following funds for purposes of meeting its transfer obligations under this section:

(A) General funds of the transferor entity.

(B) Any other funds permitted by law to be used for these purposes, except that a transferor entity shall not submit to the Controller any federal funds unless those federal funds are authorized by federal law to be used to match other federal funds. In addition, no private donated funds from any health care provider, or from any person or organization affiliated with the health care provider, shall be channeled through a transferor entity or any other public entity to the fund, unless the donated funds will qualify under federal rules as a valid component of the nonfederal share of the Medi-Cal program and will be matched by federal funds. The

transferor entity shall be responsible for determining that funds transferred meet the requirements of this subparagraph.

(j) (1) If a transferor entity does not submit any transfer amount within the time period specified in this section, the Controller shall offset immediately the amount owed against any funds which otherwise would be payable by the state to the transferor entity. The Controller, however, shall not impose an offset against any particular funds payable to the transferor entity where the offset would violate state or federal law.

(2) Where a withhold or a recoupment occurs pursuant to the provisions of paragraph (2) of subdivision (r) of Section 14105.98, the nonfederal portion of the amount in question shall remain in the fund, or shall be redeposited in the fund by the department, as applicable. The department shall then proceed as follows:

(A) If the withhold or recoupment was imposed with respect to a hospital whose licensee was a transferor entity for the particular state fiscal year to which the withhold or recoupment related, the nonfederal portion of the amount withheld or recouped shall serve as a credit for the particular transferor entity against an equal amount of transfer obligations under this section, to be applied whenever the transfer obligations next arise. Should no such transfer obligation arise within 180 days, the department shall return the funds in question to the particular transferor entity within 30 days thereafter.

(B) For other situations, the withheld or recouped nonfederal portion shall be subject to paragraph (7) of subdivision (h).

(k) All transfer amounts received by the Controller or amounts offset by the Controller shall immediately be deposited in the fund.

(*l*) For purposes of this section, the disproportionate share list utilized by the department for a particular transfer year shall be identical to the disproportionate share list utilized by the department for the same state fiscal year for purposes of Section 14105.98. Nothing on a disproportionate share list, once issued by the department, shall be modified for any reason other than mathematical or typographical errors or omissions on the part of the department or the Office of Statewide Health Planning and Development in preparation of the list.

(m) Neither the intergovernmental transfers required by this section, nor any elective transfer made pursuant to Section 14164, shall create, lead to, or expand the health care funding or service obligations for current or future years for any transferor entity, except as required of the state by this section or as may be required by federal law, in which case the state shall be held harmless by the transferor entities on a pro rata basis.

(n) Except as otherwise permitted by state and federal law, no transfer amount submitted to the Controller under this section, and no offset by the Controller pursuant to subdivision (j), shall be claimed or recognized as an allowable element of cost in Medi-Cal cost reports submitted to the department.

(o) Whenever additional transfer amounts are required to fund the nonfederal share of payment adjustment amounts under Section 14105.98 that are distributed after the close of the particular payment adjustment year to which the payment adjustment amounts apply, the additional transfer amounts shall be paid by the parties who were the transferor entities for the particular transfer year that was concurrent with the particular payment adjustment year. The additional transfer amounts shall be calculated under the formula that was in effect during the particular transfer year. For transfer years prior to the 1993–94 transfer year, the percentage of the additional transfer amounts available for transfer to the Health Care Deposit Fund under subdivision (d) shall be the percentage that was in effect during the particular transfer year. These additional transfer amounts shall be paid by transferor entities within 20 days after the department notifies the transferor entity in writing of the additional transfer amount to be paid.

(p) (1) Ten million dollars ($10,000,000) of the amount transferred from the Medi-Cal Inpatient Payment Adjustment Fund to the Health Care Deposit Fund due to amounts transferred attributable to years prior to the 1993–94 fiscal year is hereby appropriated without regard to fiscal years to the State Department of Health Services to be used to support the development of managed care programs under the department's plan to expand Medi-Cal managed care.

(2) These funds shall be used by the department for both of the following purposes: (A) distributions to counties or other local entities that contract with the department to receive those funds to offset a portion of the costs of forming the local initiative entity, and (B) distributions to local initiative entities that contract with the department to receive those funds to offset a portion of the costs of developing the local initiative health delivery system in accordance with the department's plan to expand Medi-Cal managed care.

(3) Entities contracting with the department for any portion of the ten million dollars ($10,000,000) shall meet the objectives of the department's plan to expand Medi-Cal managed care with regard to traditional and safety net providers.

(4) Entities contracting with the department for any portion of the ten million dollars ($10,000,000) may be authorized under those contracts to utilize their funds to provide for reimbursement of the costs of local organizations and entities incurred in participating in the development and operation of a local initiative.

(5) To the full extent permitted by state and federal law, these funds shall be distributed by the department for expenditure at the local level in a manner that qualifies for federal financial participation under the medicaid program.

(q) (1) Any local initiative entity that has performed unanticipated additional work for the purposes identified in subparagraph (B) of paragraph (2) of subdivision (p) resulting in

additional costs attributable to the development of its local initiative health delivery system, may file a claim for reimbursement with the department for the additional costs incurred due to delays in start dates through the 1996–97 fiscal year. The claim shall be filed by the local initiative entity not later than 90 days after the effective date of the act adding this subdivision, and shall not seek extra compensation for any sum that is or could have been asserted pursuant to the contract disputes and appeals resolution provisions of the local initiative entity's respective two-plan model contract. All claims for unanticipated additional incurred costs shall be submitted with adequate supporting documentation including, but not limited to, all of the following:

(A) Invoices, receipts, job descriptions, payroll records, work plans, and other materials that identify the unanticipated additional claimed and incurred costs.

(B) Documents reflecting mitigation of costs.

(C) To the extent lost profits are included in the claim, documentation identifying those profits and the manner of calculation.

(D) Documents reflecting the anticipated start date, the actual start date, and reasons for the delay between the dates, if any.

(2) In determining any amount to be paid, the department shall do all of the following:

(A) Conduct a fiscal analysis of the local initiative entity's claimed costs.

(B) Determine the appropriate amount of payment, after taking into consideration the supporting documentation and the results of any audit.

(C) Provide funding for any such payment, as approved by the Department of Finance through the deficiency process.

(D) Complete the determination required in subparagraph (B) within six months after receipt of a local initiative entity's completed claim and supporting documentation. Prior to final determination, there shall be a review and comment period for that local initiative entity.

(E) Make reasonable efforts to obtain federal financial participation. In the event federal financial participation is not allowed for this payment, the state's payment shall be 50 percent of the total amount determined to be payable.

SEC. 3. The State Department of Health Services shall take such steps as are necessary to have published on or before June 29, 1998, any public notices that are appropriate or required under federal or California law in order to ensure a federal medicaid effective date no later than June 30, 1998, for the provisions of this act. Notwithstanding any other provision of law, the State Department of Health Services may arrange for the publication of any notice through a private vendor, on a bid or nonbid basis, on an exclusive or nonexclusive basis, without review or approval by any other department, agency,

or instrumentality of the state. The costs of publishing any notice through a private vendor shall be recovered by the State Department of Health Services from the Medi-Cal Inpatient Payment Adjustment Fund.

SEC. 4. The amendments to clause (vii) of subparagraph (C) of paragraph (3) of subdivision (ab), and clause (vii) of subparagraph (C) of paragraph (3) of subdivision (ad), of Section 14105.98 of the Welfare and Institutions Code, as set forth in Section 1 of this act, are intended to clarify existing law and not to be substantive changes to existing law.

SEC. 5. It is the intent of the Legislature to preserve the disproportionate share program for eligible hospitals, to support the entire hospital safety net through the principles embodied in this act, and to obtain all available federal funds for the eligible hospitals.

SEC. 6. Certain provisions of subdivisions (ai) and (aj) of Section 14105.98 of the Welfare and Institutions Code, as added by Section 1 of this act, are based on projections regarding the federal medical assistance percentage for federal financial participation purposes that will be applicable to Medi-Cal program expenditures with respect to the 2000 federal fiscal year. To the extent that the projections are not consistent with the federal percentage that is ultimately set by the federal government as applicable to the Medi-Cal program with respect to the 2000 federal fiscal year, it is the intent of the Legislature to enact technical amendments to modify appropriate provisions of subdivisions (ai) and (aj) of Section 14105.98.

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

In order to ensure sufficient funding for disproportionate share providers in the Medi-Cal program to enable them to provide sufficient access to Medi-Cal benefits as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 72

An act to amend Section 76102 of the Government Code, relating to law enforcement.

[Approved by Governor June 25, 1998. Filed with Secretary of State June 25, 1998.]

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

SECTION 1. The Legislature finds and declares that the Automated Fingerprint Identification Fund was established in order

to provide funding for all costs associated with the booking process, which costs may include costs for the purchase and use of new technologies, facilities, and tools relating to the booking process, such as digital photographic equipment, and, thus, this act clarifies existing law.

SEC. 2. Section 76102 of the Government Code is amended to read:

76102. (a) For the purpose of assisting any county in the establishment of adequate fingerprint facilities and adequate suspect booking identification facilities, including, but not limited to, digital image photographic suspect booking identification facilities, in the county, the board of supervisors may establish in the county treasury an Automated Fingerprint Identification and Digital Image Photographic Suspect Booking Identification System Fund into which shall be deposited the amounts specified in the resolutions adopted by the board of supervisors as authorized in accordance with this title. The moneys of the fund shall be payable only for the purchase, lease, operation, including personnel and related costs, and maintenance of automated fingerprint equipment and digital image photographic equipment, replacement of existing automated fingerprint equipment, digital image photographic equipment, and other equipment needed for the suspect booking process, and for the reimbursement of local agencies within the county which have previously purchased, leased, operated, or maintained automated fingerprint equipment and digital image photographic equipment from other funding sources.

(b) For purposes of this section, the following terms have the following meanings:

(1) "Automated fingerprint equipment" means that equipment designated for the storage or retrieval of fingerprint data which is compatible with the California Identification System Remote Access Network.

(2) "Digital photographic equipment" means that equipment designed for the capture, storage, retrieval, or transmittal of digital photographic images of persons who are booked as a result of having been arrested or charged with a crime.

(c) The fund moneys shall be held by the county treasurer separate from any funds subject to transfer or division pursuant to Section 1463 of the Penal Code. Deposits to the fund may continue through and including the 20th year after the initial calendar year in which the surcharge is collected, or longer if and as necessary to make payments upon any lease or leaseback arrangement utilized to finance any of the projects specified herein.

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CHAPTER 73

An act to amend Section 4024.2 of the Penal Code, relating to work release.

[Approved by Governor June 25, 1998. Filed with Secretary of State June 25, 1998.]

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

SECTION 1. Section 4024.2 of the Penal Code is amended to read:

4024.2. (a) Notwithstanding any other law, the board of supervisors of any county may authorize the sheriff or other official in charge of county correctional facilities to offer a voluntary program under which any person committed to the facility may participate in a work release program pursuant to criteria described in subdivision (b), in which one day of participation will be in lieu of one day of confinement.

(b) The criteria for a work release program are the following:

(1) The work release program shall consist of any of the following:

(A) Manual labor to improve or maintain levees or public facilities, including, but not limited to, streets, parks, and schools.

(B) Manual labor in support of nonprofit organizations, as approved by the sheriff or other official in charge of the correctional facilities. As a condition of assigning participants of a work release program to perform manual labor in support of nonprofit organizations pursuant to this section, the board of supervisors shall obtain workers' compensation insurance which shall be adequate to cover work-related injuries incurred by those participants, in accordance with Section 3363.5 of the Labor Code.

(C) Performance of graffiti cleanup for local governmental entities, including participation in a graffiti abatement program as defined in subdivision (f) of Section 594, as approved by the sheriff or other official in charge of the correctional facilities.

(D) Performance of weed and rubbish abatement on public and private property pursuant to Chapter 13 (commencing with Section 39501) of Division 3 of Title 4 of the Government Code, or Part 5 (commencing with Section 14875) or Part 6 (commencing with Section 14930) of Division 12 of the Health and Safety Code, as approved by the sheriff or other official in charge of the correctional facilities.

(E) Performance of house repairs or yard services for senior citizens and the performance of repairs to senior centers through contact with local senior service organizations, as approved by the sheriff or other official in charge of the correctional facilities. Where a work release participant has been assigned to this task, the sheriff or other official shall agree upon in advance with the senior service organization about the type of services to be rendered by the

participant and the extent of contact permitted between the recipients of these services and the participant.

(F) Any person who is not able to perform manual labor as specified in this paragraph because of a medical condition, physical disability, or age, may participate in a work release program involving any other type of public sector work that is designated and approved by the sheriff or other official in charge of county correctional facilities.

(2) The sheriff or other official may permit a prisoner participating in a work release program to receive work release credit for participation in education, vocational training, or substance abuse programs in lieu of performing labor in a work release program on an hour-for-hour basis. However, credit for that participation may not exceed one-half of the hours established for the work release program, and the remaining hours shall consist of manual labor described in paragraph (1).

(3) The work release program shall be under the direction of a responsible person appointed by the sheriff or other official in charge.

(4) The hours of labor to be performed pursuant to this section shall be uniform for all persons committed to a facility in a county and may be determined by the sheriff or other official in charge of county correctional facilities, and each day shall be a minimum of 8 and a maximum of 10 hours, in accordance with the normal working hours of county employees assigned to supervise the programs. However, reasonable accommodation may be made for participation in a program under paragraph (2).

As used in this section, "nonprofit organizations" means organizations established or operated for the benefit of the public or in support of a significant public interest, as set forth in Section 501(c)(3) of the Internal Revenue Code. Organizations established or operated for the primary purpose of benefiting their own memberships are specifically excluded.

(c) The board of supervisors may prescribe reasonable rules and regulations under which a work release program is operated and may provide that participants wear clothing of a distinctive character while performing the work. As a condition of participating in a work release program, a person shall give his or her promise to appear for work or assigned activity by signing a notice to appear before the sheriff or at the education, vocational, or substance abuse program at a time and place specified in the notice and shall sign an agreement that the sheriff may immediately retake the person into custody to serve the balance of his or her sentence if the person fails to appear for the program at the time and place agreed to, does not perform the work or activity assigned, or for any other reason is no longer a fit subject for release under this section. A copy of the notice shall be delivered to the person and a copy shall be retained by the sheriff. Any person who willfully violates his or her written promise to appear

at the time and place specified in the notice is guilty of a misdemeanor.

Whenever a peace officer has reasonable cause to believe the person has failed to appear at the time and place specified in the notice or fails to appear or work at the time and place agreed to or has failed to perform the work assigned, the peace officer may, without a warrant, retake the person into custody, or the court may issue an arrest warrant for the retaking of the person into custody, to complete the remainder of the original sentence. A peace officer may not retake a person into custody under this subdivision, without a warrant for arrest, unless the officer has a written order to do so, signed by the sheriff or other person in charge of the program, that describes with particularity the person to be retaken.

(d) Nothing in this section shall be construed to require the sheriff or other official in charge to assign a person to a program pursuant to this section if it appears from the record that the person has refused to satisfactorily perform as assigned or has not satisfactorily complied with the reasonable rules and regulations governing the assignment or any other order of the court.

A person shall be eligible for work release under this section only if the sheriff or other official in charge concludes that the person is a fit subject therefor.

(e) The board of supervisors may prescribe a program administrative fee, not to exceed the pro rata cost of administration, to be paid by each person according to his or her ability to pay.

CHAPTER 74

An act to amend Sections 9000 and 9009 of the Penal Code, relating to electronic monitoring.

[Approved by Governor June 25, 1998. Filed with Secretary of State June 25, 1998.]

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

SECTION 1. Section 9000 of the Penal Code is amended to read:

9000. (a) Notwithstanding any other provision of law, the Boards of Supervisors of the Counties of Contra Costa, San Diego, and San Mateo may authorize the county probation department or correctional administrator to create a pilot project to utilize continuous electronic monitoring to electronically monitor the whereabouts of probationers and persons released from jail, as provided by this chapter. The Department of Corrections and the Department of the Youth Authority may participate in the pilot projects authorized by this chapter for parolees and persons released from custody by those departments for continuous electronic

monitoring to electronically monitor the whereabouts of those persons in those counties once the board of supervisors establishes a county pilot project as provided by this chapter.

(b) Any program of continuous electronic monitoring established pursuant to this chapter shall have as its primary objective the enhancement of public safety through the reduction in the number of people being victimized by crimes committed by persons on parole or probation or released from custody.

(c) It is the intent of the Legislature in enacting this chapter to specifically expand the authority of a supervising authority acting pursuant to this chapter to implement a program of monitoring to include a system of continuous electronic monitoring that conforms with the requirements of this chapter.

(d) For the purposes of this chapter, "supervising authority" means the Department of Corrections, the Department of the Youth Authority, and a correctional administrator or probation department authorized by a board of supervisors to utilize continuous electronic monitoring.

(e) Operation of a pilot project authorized by a county board of supervisors pursuant to this chapter shall be contingent on the Counties of Contra Costa, San Diego, and San Mateo obtaining sufficient funds for this purpose.

SEC. 2. Section 9009 of the Penal Code is amended to read:

9009. (a) The Boards of Supervisors of the Counties of Contra Costa, San Diego, and San Mateo shall evaluate any pilot project conducted pursuant to this chapter and submit a preliminary report on the evaluation to the Legislature on or before January 1, 2000 and a final report thereon to the Legislature on or before January 1, 2002.

(b) This chapter shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

CHAPTER 75

An act to amend Section 361.5 of the Welfare and Institutions Code, relating to dependent children.

[Approved by Governor June 25, 1998. Filed with Secretary of State June 25, 1998.]

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

SECTION 1. Section 361.5 of the Welfare and Institutions Code is amended to read:

361.5. (a) Except as provided in subdivision (b) of this section or when the parent has voluntarily relinquished the minor and the relinquishment has been filed with the State Department of Social

Services, or upon the establishment of an order of guardianship pursuant to Section 360, 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 mother and statutorily presumed father, or guardians. Upon a finding and declaration of paternity by the juvenile court or proof of a prior declaration of paternity by any court of competent jurisdiction, the juvenile court may order services for the minor and the biological father, if the court determines that the services will benefit the child. Child welfare services, when provided, shall be provided as follows:

(1) For a minor who, on the date of initial removal from the physical custody of his or her parent or guardian, was three years of age or older, court-ordered services shall not exceed a period of 12 months.

(2) For a minor who, on the date of initial removal from the physical custody of his or her parent or guardian, was under the age of three years, court-ordered services shall not exceed a period of six months.

However, court-ordered services may be extended up to a maximum time period not to exceed 18 months if it can be shown that the objectives of the service plan can be achieved within the extended time period. The court shall extend the time period 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 the extended time period or that reasonable services have not been provided to the parent or guardian. If the court extends the time period, the court shall specify the factual basis for its conclusion that there is a substantial probability that the minor will be returned to the physical custody of his or her parent or guardian within the extended time period. 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 minor. 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 minor cannot be safely returned to the care and custody of a parent or guardian without court supervision, but the minor clearly desires contact with the parent or guardian, the court shall take the child's desire into account in devising a permanency plan.

In cases where the minor was under the age of three years on the date of the initial removal from the physical custody of his or her parent or guardian, the court shall inform the parent or guardian that the failure of the parent or guardian to participate regularly in any court-ordered treatment programs or to cooperate or avail himself

or herself of services provided as part of the child welfare services case plan may result in a termination of efforts to reunify the family after six months.

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 or a sibling of the minor has 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 guardian 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.

(4) That the parent or guardian of the minor has caused the death of another minor through abuse or neglect.

(5) That the minor was brought within the jurisdiction of the court under subdivision (c) 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 to the minor, a sibling, or a half-sibling by a parent or guardian, as defined in this subdivision, and the court makes a factual finding that it would not benefit the minor 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 minor or a sibling or half-sibling of the minor, or between the minor or a sibling or half-sibling of the minor and another person or animal with the actual or implied consent of the parent or guardian; or the penetration or manipulation of the minor's, sibling's, or half-sibling'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 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 minor's body or the body of a sibling or half-sibling of the minor 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 minor, sibling, or half-sibling in a closed space; or any other torturous act or omission which would be reasonably understood to cause serious emotional damage.

(7) That the parent is not receiving reunification services for a sibling or a half-sibling of the minor pursuant to paragraph (3), (5), or (6).

(8) That the minor was conceived by means of the commission of an offense listed in Section 288 or 288.5 of the Penal Code, or by an act committed outside of this state which if committed in this state would constitute such an offense. This paragraph only applies to the parent who committed the offense or act.

(9) That the minor has been found to be a child described in subdivision (g) of Section 300, that the parent or guardian of the minor willfully abandoned the minor, and the court finds that the abandonment itself constituted a serious danger to the child. For the purposes of this paragraph, "serious danger" means that without the intervention of another person or agency, the minor would have sustained severe or permanent disability, injury, illness, or death. For purposes of this paragraph, "willful abandonment" shall not be construed as actions taken in good faith by the parent without the intent of placing the minor in serious danger.

(10) That (A) the court ordered a permanent plan of adoption, guardianship, or long-term foster care for any siblings or half-siblings of the minor because the parent or guardian failed to reunify with the sibling or half-sibling after the sibling or half-sibling had been removed from that parent or guardian pursuant to Section 361 and that parent or guardian is the same parent or guardian described in subdivision (a), or (B) the parental rights of a parent or guardian over any sibling or half-sibling of the minor had been permanently severed, and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half-sibling of that minor from that parent or guardian.

(11) That the parent or guardian has been convicted of a violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code.

(12) That the parent or guardian of the minor has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior treatment for this problem during a three-year period

immediately prior to the filing of the petition which brought that minor to the court's attention, or has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required by Section 358.1 on at least two prior occasions, even though the programs identified were available and accessible.

(13) That the parent or guardian of the minor has advised the court that he or she is not interested in receiving family maintenance or family reunification services or having the minor returned to or placed in his or her custody and does not wish to receive family maintenance or reunification services.

The parent or guardian shall be represented by counsel and shall execute a waiver of services form to be adopted by the Judicial Council. The court shall advise the parent or guardian of any right to services and of the possible consequences of a waiver of services, including the termination of parental rights and placement of the child for adoption. The court shall not accept the waiver of services unless it states on the record its finding that the parent or guardian has knowingly and intelligently waived the right to services.

(14) That the parent or guardian has on one or more occasions willfully abducted the child or child's sibling or half-sibling from his or her placement and refused to disclose the child's or child's sibling or half-sibling's whereabouts, refused to return physical custody of the child or child's sibling or half-sibling to his or her placement, or refused to return physical custody of the child or child's sibling or half-sibling to the social worker.

(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 minor within 12 months.

The court shall not order reunification for a parent or guardian described in paragraph (3), (4), (6), (7), (8), (9), (10), (11), (12), (13), or (14) of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the minor.

In addition, the court shall not order reunification in any situation described in paragraph (5) of subdivision (b) unless it finds that, based on competent testimony, those services are likely to prevent reabuse or continued neglect of the minor or that failure to try reunification will be detrimental to the minor because the minor 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 minor.

The failure of the parent to respond to previous services, the fact that the minor 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 minor 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 minor, the degree of parent-child bonding, the length of the sentence, the nature of the treatment, the nature of the crime or illness, the degree of detriment to the minor 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 the parent and minor through collect telephone 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 minor if the services are not detrimental to the minor.

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 4.8 (commencing with Section 1174) of Title 7 of Part 2 of, 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), (6), (7), (8), (9), (10), (11), (12), (13), or (14) 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 minor 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 minor pursuant to paragraph (6) or (7) 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 minor or the minor's sibling or half-sibling.

(2) The circumstances under which the abuse or harm was inflicted on the minor or the minor's sibling or half-sibling.

(3) The severity of the emotional trauma suffered by the minor or the minor's sibling or half-sibling.

(4) Any history of abuse of other children by the offending parent or guardian.

(5) The likelihood that the minor 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 minor 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 minor.

(j) This section shall become operative January 1, 1999.

CHAPTER 76

An act to amend Section 6592 of the Fish and Game Code, relating to fish.

[Approved by Governor June 25, 1998. Filed with Secretary of State June 26, 1998.]

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

SECTION 1. Section 6592 of the Fish and Game Code is amended to read:

6592. There is hereby established in state government the California Ocean Resources Enhancement and Hatchery Program for the purpose of basic and applied research on the artificial propagation, rearing, stocking, and distribution of adversely affected marine fish species that are important to sport or commercial fishing in the ocean waters off the coast of California south of a line extending due west from Point Arguello.

CHAPTER 77

An act to amend Section 883 of the Code of Civil Procedure, and to amend Sections 2401.5, 8480, 9602, and 16441 of the Probate Code, relating to liability.

[Approved by Governor June 25, 1998. Filed with Secretary of State June 26, 1998.]

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

SECTION 1. Section 883 of the Code of Civil Procedure is amended to read:

883. (a) A judgment debtor entitled to compel contribution or repayment pursuant to this chapter may apply on noticed motion to the court that entered the judgment for an order determining liability for contribution or repayment. The application shall be made at any time before the judgment is satisfied in full or within 30 days thereafter.

(b) The order determining liability for contribution or repayment entitles the judgment debtor to the benefit of the judgment to enforce the liability, including every remedy that the judgment creditor has against the persons liable, to the extent of the liability.

(c) Nothing in this section limits any other remedy that a judgment debtor entitled to contribution or repayment may have.

SEC. 2. Section 2401.5 of the Probate Code is amended to read:

2401.5. (a) If the guardian or conservator is liable for interest pursuant to Section 2401.3, the guardian or conservator is liable for the greater of the following amounts:

(1) The amount of interest that accrues at the legal rate on judgments.

(2) The amount of interest actually received.

(b) If the guardian or conservator has acted reasonably and in good faith under the circumstances as known to the guardian or conservator, the court, in its discretion, may excuse the guardian or conservator in whole or in part from liability under subdivision (a) if it would be equitable to do so.

SEC. 3. Section 8480 of the Probate Code is amended to read:

8480. (a) Except as otherwise provided by statute, every person appointed as personal representative shall, before letters are issued, give a bond approved by the court. If two or more persons are appointed, the court may require either a separate bond from each or a joint and several bond. If a joint bond is furnished, the liability on the bond is joint and several.

(b) The bond shall be for the benefit of interested persons and shall be conditioned on the personal representative's faithful execution of the duties of the office according to law.

(c) If the person appointed as personal representative fails to give the required bond, letters shall not be issued. If the person appointed as personal representative fails to give a new, additional, or supplemental bond, or to substitute a sufficient surety, under court order, the person may be removed from office.

SEC. 4. Section 9602 of the Probate Code is amended to read:

9602. (a) If the personal representative is liable for interest pursuant to Section 9601, the personal representative is liable for the greater of the following amounts:

(1) The amount of interest that accrues at the legal rate on judgments.

(2) The amount of interest actually received.

(b) If the personal representative has acted reasonably and in good faith under the circumstances as known to the personal representative, the court, in its discretion, may excuse the personal representative in whole or in part from liability under subdivision (a) if it would be equitable to do so.

SEC. 5. Section 16441 of the Probate Code is amended to read:

16441. (a) If the trustee is liable for interest pursuant to Section 16440, the trustee is liable for the greater of the following amounts:

(1) The amount of interest that accrues at the legal rate on judgments in effect during the period when the interest accrued.

(2) The amount of interest actually received.

(b) If the trustee has acted reasonably and in good faith under the circumstances as known to the trustee, the court, in its discretion, may excuse the trustee in whole or in part from liability under subdivision (a) if it would be equitable to do so.

CHAPTER 78

An act to amend Section 1624 of the Civil Code, and to amend Sections 1206 and 2201 of the Commercial Code, relating to contracts.

[Approved by Governor June 25, 1998. Filed with Secretary of State June 26, 1998.]

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

SECTION 1. Section 1624 of the Civil Code is amended to read:

1624. (a) The following contracts are invalid, unless they, or some note or memorandum thereof, are in writing and subscribed by the party to be charged or by the party's agent:

(1) An agreement that by its terms is not to be performed within a year from the making thereof.

(2) A special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in Section 2794.

(3) An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein; such an agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent is in writing, subscribed by the party sought to be charged.

(4) An agreement authorizing or employing an agent, broker, or any other person to purchase or sell real estate, or to lease real estate for a longer period than one year, or to procure, introduce, or find a purchaser or seller of real estate or a lessee or lessor of real estate where the lease is for a longer period than one year, for compensation or a commission.

(5) An agreement that by its terms is not to be performed during the lifetime of the promisor.

(6) An agreement by a purchaser of real property to pay an indebtedness secured by a mortgage or deed of trust upon the property purchased, unless assumption of the indebtedness by the purchaser is specifically provided for in the conveyance of the property.

(7) A contract, promise, undertaking, or commitment to loan money or to grant or extend credit, in an amount greater than one hundred thousand dollars ($100,000), not primarily for personal, family, or household purposes, made by a person engaged in the business of lending or arranging for the lending of money or extending credit. For purposes of this section, a contract, promise, undertaking or commitment to loan money secured solely by residential property consisting of one to four dwelling units shall be deemed to be for personal, family, or household purposes.

(b) Notwithstanding paragraph (1) of subdivision (a):

(1) An agreement or contract that is valid in other respects and is otherwise enforceable is not invalid for lack of a note, memorandum, or other writing and is enforceable by way of action or defense, provided that the agreement or contract is a qualified financial contract as defined in paragraph (2) and (A) there is, as provided in paragraph (3), sufficient evidence to indicate that a contract has been made or (B) the parties thereto by means of a prior or subsequent written contract, have agreed to be bound by the terms of the qualified financial contract from the time they reached agreement (by telephone, by exchange of electronic messages, or otherwise) on those terms.

(2) For purposes of this subdivision, a "qualified financial contract" means an agreement as to which each party thereto is other than a natural person and that is any of the following:

(A) For the purchase and sale of foreign exchange, foreign currency, bullion, coin or precious metals on a forward, spot, next-day value or other basis.

(B) A contract (other than a contract for the purchase of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade) for the purchase, sale, or transfer of any

commodity or any similar good, article, service, right, or interest that is presently or in the future becomes the subject of a dealing in the forward contract trade, or any product or byproduct thereof, with a maturity date more than two days after the date the contract is entered into.

(C) For the purchase and sale of currency, or interbank deposits denominated in United States dollars.

(D) For a currency option, currency swap, or cross-currency rate swap.

(E) For a commodity swap or a commodity option (other than an option contract traded on, or subject to the rules of a contract market or board of trade).

(F) For a rate swap, basis swap, forward rate transaction, or an interest rate option.

(G) For a security-index swap or option, or a security or securities price swap or option.

(H) An agreement that involves any other similar transaction relating to a price or index (including, without limitation, any transaction or agreement involving any combination of the foregoing, any cap, floor, collar, or similar transaction with respect to a rate, commodity price, commodity index, security or securities price, security index, other price index, or loan price).

(I) An option with respect to any of the foregoing.

(3) There is sufficient evidence that a contract has been made in any of the following circumstances:

(A) There is evidence of an electronic communication (including, without limitation, the recording of a telephone call or the tangible written text produced by computer retrieval), admissible in evidence under the laws of this state, sufficient to indicate that in the communication a contract was made between the parties.

(B) A confirmation in writing sufficient to indicate that a contract has been made between the parties and sufficient against the sender is received by the party against whom enforcement is sought no later than the fifth business day after the contract is made (or any other period of time that the parties may agree in writing) and the sender does not receive, on or before the third business day after receipt (or the other period of time that the parties may agree in writing), written objection to a material term of the confirmation. For purposes of this subparagraph, a confirmation or an objection thereto is received at the time there has been an actual receipt by an individual responsible for the transaction or, if earlier, at the time there has been constructive receipt, which is the time actual receipt by that individual would have occurred if the receiving party, as an organization, had exercised reasonable diligence. For the purposes of this subparagraph, a "business day" is a day on which both parties are open and transacting business of the kind involved in that qualified financial contract that is the subject of confirmation.

(C) The party against whom enforcement is sought admits in its pleading, testimony, or otherwise in court that a contract was made.

(D) There is a note, memorandum, or other writing sufficient to indicate that a contract has been made, signed by the party against whom enforcement is sought or by its authorized agent or broker.

For purposes of this paragraph, evidence of an electronic communication indicating the making in that communication of a contract, or a confirmation, admission, note, memorandum, or writing is not insufficient because it omits or incorrectly states one or more material terms agreed upon, as long as the evidence provides a reasonable basis for concluding that a contract was made.

(4) For purposes of this subdivision, the tangible written text produced by telex, telefacsimile, computer retrieval, or other process by which electronic signals are transmitted by telephone or otherwise shall constitute a writing, and any symbol executed or adopted by a party with the present intention to authenticate a writing shall constitute a signing. The confirmation and notice of objection referred to in subparagraph (B) of paragraph (3) may be communicated by means of telex, telefacsimile, computer, or other similar process by which electronic signals are transmitted by telephone or otherwise, provided that a party claiming to have communicated in that manner shall, unless the parties have otherwise agreed in writing, have the burden of establishing actual or constructive receipt by the other party as set forth in subparagraph (B) of paragraph (3).

(c) This section does not apply to leases subject to Division 10 (commencing with Section 10101) of the Commercial Code.

SEC. 2. Section 1206 of the Commercial Code is amended to read:

1206. (1) Except in the cases described in subdivision (2) of this section a contract for the sale of personal property is not enforceable by way of action or defense beyond five thousand dollars ($5,000) in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his or her authorized agent.

(2) Subdivision (1) of this section does not apply to contracts for the sale of goods (Section 2201) nor of securities (Section 8113) nor to security agreements (Section 9203).

(3) Subdivision (1) of this section does not apply to a qualified financial contract as that term is defined in paragraph (2) of subdivision (b) of Section 1624 of the Civil Code if either (a) there is, as provided in paragraph (3) of subdivision (b) of 1624 of the Civil Code, sufficient evidence to indicate that a contract has been made or (b) the parties thereto, by means of a prior or subsequent written contract, have agreed to be bound by the terms of the qualified financial contract from the time they reach agreement (by

telephone, by exchange of electronic messages, or otherwise) on those terms.

SEC. 3. Section 2201 of the Commercial Code is amended to read:

2201. (1) Except as otherwise provided in this section a contract for the sale of goods for the price of five hundred dollars ($500) or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his or her authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in the writing.

(2) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subdivision (1) against the party unless written notice of objection to its contents is given within 10 days after it is received.

(3) A contract which does not satisfy the requirements of subdivision (1) but which is valid in other respects is enforceable:

(a) If the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement;

(b) If the party against whom enforcement is sought admits in his or her pleading, testimony, or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) With respect to goods for which payment has been made and accepted or which have been received and accepted (Section 2606).

(4) Subdivision (1) of this section does not apply to a qualified financial contract as that term is defined in paragraph (2) of subdivision (b) of Section 1624 of the Civil Code if either (a) there is, as provided in paragraph (3) of subdivision (b) of 1624 of the Civil Code, sufficient evidence to indicate that a contract has been made or (b) the parties thereto, by means of a prior or subsequent written contract, have agreed to be bound by the terms of the qualified financial contract from the time they reach agreement (by telephone, by exchange of electronic messages, or otherwise) on those terms.

CHAPTER 79

An act to add Section 929 to the Penal Code, relating to grand jury reports.

[Approved by Governor June 25, 1998. Filed with Secretary of State June 26, 1998.]

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

SECTION 1. Section 929 is added to the Penal Code, to read:

929. As to any matter not subject to privilege, with the approval of the presiding judge of the superior court or the judge appointed by the presiding judge to supervise the grand jury, a grand jury may make available to the public part or all of the evidentiary material, findings, and other information relied upon by, or presented to, a grand jury for its final report in any civil grand jury investigation provided that the name of any person, or facts that lead to the identity of any person who provided information to the grand jury, shall not be released. Prior to granting approval pursuant to this section, a judge may require the redaction or masking of any part of the evidentiary material, findings, or other information to be released to the public including, but not limited to, the identity of witnesses and any testimony or materials of a defamatory or libelous nature.

SEC. 2. The Legislature intends that the provisions of Section 929 of the Penal Code authorizing a judge to redact or mask the identity of witnesses will encourage full candor in testimony in civil grand jury investigations by protecting the privacy and confidentiality of those who participate in any civil grand jury investigation.

CHAPTER 80

An act to amend Sections 18633 , 18633.5, and 23305.5 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor June 25, 1998. Filed with Secretary of State June 26, 1998.]

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

SECTION 1. Section 18633 of the Revenue and Taxation Code is amended to read:

18633. (a) (1) Every partnership, on or before the fifteenth day of the fourth month following the close of its taxable year, shall make a return for that taxable year, stating specifically the items of gross income and the deductions allowed by Part 10 (commencing with Section 17001). Except as otherwise provided in Section 18621.5, 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. 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.

(2) In addition to returns required by paragraph (1), every limited partnership subject to the tax imposed by subdivision (b) of Section 17935 or 23081, on or before the fifteenth day of the fourth month following the close of its taxable year, shall make a return for that taxable year. In the case of a limited partnership not doing business in this state, the Franchise Tax Board shall prescribe the manner and extent to which the information identified in paragraph (1) shall be included with the return required by this paragraph.

(b) Each partnership required to file a return under subdivision (a) for any 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, address, and taxpayer identification number 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 to that other person, in the manner prescribed by the Franchise Tax Board, 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.

(e) The amendments made to this section by the act adding this subdivision shall apply to returns required to be filed under subdivision (a) after the effective date of that act.

(f) The amendments made to this section by the act adding this subdivision shall apply to returns required to be filed on or after January 1, 1998.

SEC. 2. Section 18633.5 of the Revenue and Taxation Code is amended to read:

18633.5. (a) Every limited liability company which is classified as a partnership for California tax purposes that is doing business in this state, organized in this state, or registered with the Secretary of State shall file its return on or before the fifteenth day of the fourth month following the close of its taxable year, shall make a return for that taxable year, stating specifically the items of gross income and the

deductions allowed by Part 10 (commencing with Section 17001). 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. 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 limited liability company members. In the case of a limited liability company not doing business in this state, and subject to the tax imposed by subdivision (b) of Section 17941 or 23091, the Franchise Tax Board shall, for returns required to be filed on or after January 1, 1998, prescribe the manner and extent to which the information identified in this subdivision shall be included with the return required by this subdivision.

(b) Each limited liability company required to file a return under subdivision (a) for any limited liability company taxable or income year shall, on or before the day on which the return for that taxable or income year was required to be filed, furnish to each person who holds an interest in that limited liability company at any time during that taxable or income year a copy of that information required to be shown on that return as may be required by forms and instructions prescribed by the Franchise Tax Board.

(c) Any person who holds an interest in a limited liability company as a nominee for another person shall do both of the following:

(1) Furnish to the limited liability company, in the manner prescribed by the Franchise Tax Board, the name, address, and taxpayer identification number of that person, and any other information for that taxable or income year as the Franchise Tax Board may prescribe by forms and instructions.

(2) Furnish to that other person, in the manner prescribed by the Franchise Tax Board, the information provided by that limited liability company 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.

(e) (1) A limited liability company shall file with its return required under subdivision (a), in the form required by the Franchise Tax Board, the agreement of each nonresident member to file a return pursuant to Section 18501, to make timely payment of all taxes imposed on the member by this state with respect to the income of the limited liability company, and to be subject to personal jurisdiction in this state for purposes of the collection of income taxes, together with related interest and penalties, imposed on the member by this state with respect to the income of the limited liability company. If the limited liability company fails to timely file the agreements on behalf of each of its nonresident members, then the limited liability company shall, at the time set forth in subdivision (f), pay to this state on behalf of each nonresident member of whom an

agreement has not been timely filed an amount equal to the highest marginal tax rate in effect under Section 17041, in the case of members which are individuals, estates, or trusts, and Section 23151, in the case of members which are corporations, multiplied by the amount of the member's distributive share of the income source to the state reflected on the limited liability company's return for the taxable period. A limited liability company shall be entitled to recover the payment made from the member on whose behalf the payment was made.

(2) If a limited liability company fails to attach the agreement or to timely pay the payment required by paragraph (1), the payment shall be considered the tax of the limited liability company for purposes of the penalty prescribed by Section 19132 and interest prescribed by Section 19101 for failure to timely pay the tax. Payment of the penalty and interest imposed on the limited liability company for failure to timely pay the amount required by this subdivision shall extinguish the liability of a nonresident member for the penalty and interest for failure to make timely payment of all taxes imposed on that member by this state with respect to the income of the limited liability company.

(3) No penalty or interest shall be imposed on the limited liability company under paragraph (2) if the nonresident member timely files and pays all taxes imposed on the member by this state with respect to the income of the limited liability company.

(f) Any agreement of a nonresident member required to be filed pursuant to subdivision (e) shall be filed at either of the following times:

(1) The time the annual return is required to be filed pursuant to this section for the first taxable period for which the limited liability company became subject to tax pursuant to Chapter 10.6 (commencing with Section 17941) or Chapter 1.6 (commencing with Section 23091).

(2) The time the annual return is required to be filed pursuant to this section for any taxable period in which the limited liability company had a nonresident member on whose behalf an agreement described in subdivision (e) has not been previously filed.

(g) Any amount paid by the limited liability company to this state pursuant to paragraph (1) of subdivision (e) shall be considered to be a payment by the member on account of the income tax imposed by this state on the member for the taxable period.

(h) Every limited liability company that is classified as a corporation for California tax purposes shall be subject to the requirement to file a tax return under the provisions of Part 10.2 (commencing with Section 18401) and the applicable taxes imposed by Part 11 (commencing with Section 23001) including Section 23221 relating to the prepayment of the minimum tax to the Secretary of State.

(i) (1) Every limited liability company doing business in this state, organized in this state, or registered with the Secretary of State, that is disregarded pursuant to Section 23038 shall file a return that includes information necessary to verify its liability under Sections 17941 and 17942, provides its sole owner's name and taxpayer identification number, includes the consent of the owner to California tax jurisdiction, and includes other information necessary for the administration of this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001).

(2) If the owner's consent required under paragraph (1) is not included, the limited liability company shall pay on behalf of its owner an amount consistent with, and treated the same as, the amount to be paid under subdivision (e) by a limited liability company on behalf of a nonresident member for whom an agreement required by subdivision (e) is not attached to the return of the limited liability company.

(3) The return required under paragraph (1) shall be filed on or before the fifteenth day of the fourth month after the close of the taxable year of the owner or on or before the fifteenth day of the third month after the close of the income year of the owner, whichever is applicable.

(4) For limited liability companies disregarded pursuant to Section 23038, "taxable or income year of the owner" shall be substituted for "taxable year" in Sections 17941 and 17942.

SEC. 3. Section 23305.5 of the Revenue and Taxation Code is amended to read:

23305.5. (a) For the purposes of this article, "taxpayer" shall include any limited liability company, foreign or domestic, that is organized in this state or registered with the Secretary of State.

(b) For purposes of this article, in the case of a limited liability company:

(1) "Articles of incorporation" shall include a limited liability company's articles of organization.

(2) "Tax" shall include the tax and fee imposed by Sections 17941 and 17942, or Sections 23091 and 23092, respectively, with respect to a limited liability company classified as a partnership for California tax purposes.

CHAPTER 81

An act to amend Sections 53635, 53637, and 53648 of the Government Code, relating to local agencies.

[Approved by Governor June 25, 1998. Filed with Secretary of State June 26, 1998.]

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

SECTION 1. Section 53635 of the Government Code is amended to read:

53635. As far as possible, all money belonging to, or in the custody of, a local agency, including money paid to the treasurer or other official to pay the principal, interest, or penalties of bonds, shall be deposited for safekeeping in state or national banks, savings associations or federal associations, credit unions, or federally insured industrial loan companies in this state selected by the treasurer or other official having the legal custody of the money; or, unless otherwise directed by the legislative body pursuant to Section 53601, may be invested in the investments set forth below. A local agency purchasing or obtaining any securities described in this section, in a negotiable, bearer, registered, or nonregistered format, shall require delivery of all the securities to the local agency, including those purchased for the agency by financial advisers, consultants, or managers using the agency's funds, by book entry, physical delivery, or by third-party custodial agreement. The transfer of securities to the counterparty bank's customer book entry account may be used for book-entry delivery. For purposes of this section, "counterparty" means the other party to the transaction. A counterparty bank's trust department or separate safekeeping department may be used for the physical delivery of the security if the security is held in the name of the local agency.

(a) Bonds issued by the local agency, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency or by a department, board, agency, or authority of the local agency.

(b) United States Treasury notes, bonds, bills, or certificates of indebtedness, or those for which the faith and credit of the United States are pledged for the payment of principal and interest.

(c) Registered state warrants or treasury notes or bonds of this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the state or by a department, board, agency, or authority of the state.

(d) Bonds, notes, warrants, or other evidences of indebtedness of any local agency within this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency, or by a department, board, agency, or authority of the local agency.

(e) Obligations issued by banks for cooperatives, federal land banks, federal intermediate credit banks, federal home loan banks, the Federal Home Loan Bank, the Tennessee Valley Authority, or in obligations, participations, or other instruments of, or issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association; or in guaranteed portions of Small Business Administration notes; or in obligations, participations, or other

instruments of, or issued by, a federal agency or a United States government-sponsored enterprise.

(f) Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers acceptances. Purchases of bankers acceptances may not exceed 270 days maturity or 40 percent of the agency's surplus funds which may be invested pursuant to this section. However, no more than 30 percent of the agency's surplus funds may be invested in the bankers acceptances of any one commercial bank pursuant to this section.

This subdivision does not preclude a municipal utility district from investing any surplus money in its treasury in any manner authorized by the Municipal Utility District Act, Division 6 (commencing with Section 11501) of the Public Utilities Code.

(g) Commercial paper of "prime" quality of the highest ranking or of the highest letter and numerical rating as provided for by Moody's Investors Service, Inc., or Standard and Poor's Corporation. Eligible paper is further limited to issuing corporations that are organized and operating within the United States and having total assets in excess of five hundred million dollars ($500,000,000) and having an "A" or higher rating for the issuer's debt, other than commercial paper, if any, as provided for by Moody's Investors Service, Inc., or Standard and Poor's Corporation. Purchases of eligible commercial paper may not exceed 180 days maturity nor represent more than 10 percent of the outstanding paper of an issuing corporation. Purchases of commercial paper may not exceed 15 percent of the agency's surplus money which may be invested pursuant to this section. An additional 15 percent, or a total of 30 percent of the agency's money or money in its custody, may be invested pursuant to this subdivision. The additional 15 percent may be so invested only if the dollar-weighted average maturity of the entire amount does not exceed 31 days. "Dollar-weighted average maturity" means the sum of the amount of each outstanding commercial paper investment multiplied by the number of days to maturity, divided by the total amount of outstanding commercial paper.

(h) Negotiable certificates of deposit issued by a nationally or state-chartered bank or a savings association or federal association or a state or federal credit union or by a state-licensed branch of a foreign bank. Purchases of negotiable certificates of deposit may not exceed 30 percent of the agency's surplus money which may be invested pursuant to this section. For purposes of this section, negotiable certificates of deposit do not come within Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5, except that the amount so invested shall be subject to the limitations of Section 53638. For purposes of this section, the legislative body of a local agency and the treasurer or other official of the local agency having legal custody of the money are prohibited from depositing or investing local agency funds, or funds in the

custody of the local agency, in negotiable certificates of deposit issued by a state or federal credit union if a member of the legislative body of the local agency, or any person with investment decisionmaking authority of the administrative office, manager's office, budget office, auditor-controller's office, or treasurer's office of the local agency also serves on the board of directors, or any committee appointed by the board of directors, or the credit committee or supervisory committee, of the state or federal credit union issuing the negotiable certificates of deposit.

(i) (1) Investments in repurchase agreements or reverse repurchase agreements of any securities authorized by this section, so long as the agreements are subject to this subdivision, including the delivery requirements specified in this section.

(2) Investments in repurchase agreements may be made, on any investment authorized in this section, when the term of the agreement does not exceed one year. The market value of securities that underlay a repurchase agreement shall be valued at 102 percent or greater of the funds borrowed against those securities and the value shall be adjusted no less than quarterly.

(3) Reverse repurchase agreements may be utilized only when either of the following conditions are met:

(A) The security was owned or specifically committed to purchase, by the local agency, prior to repurchase agreement on December 31, 1994, and was sold using a reverse repurchase agreement on December 31, 1994.

(B) The security to be sold on reverse repurchase agreement has been owned and fully paid for by the local agency for a minimum of 30 days prior to sale, the total of all reverse repurchase agreements on investments owned by the local agency not purchased or committed to purchase, prior to December 31, 1994, does not exceed 20 percent of the base value of the portfolio, and the agreement does not exceed a term of 92 days, unless the agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement and the final maturity date of the same security.

(4) After December 31, 1994, a reverse repurchase agreement may not be entered into with securities not sold on a reverse repurchase agreement and purchased, or committed to purchase, prior to that date, as a means of financing or paying for the security sold on a reverse repurchase agreement, but may only be entered into with securities owned and previously paid for, for a minimum of 30 days prior to the settlement of the reverse repurchase agreement, in order to supplement the yield on securities owned and previously paid for or to provide funds for the immediate payment of a local agency obligation. Funds obtained or funds within the pool of an equivalent amount to that obtained from selling a security to a counterparty by way of a reverse repurchase agreement, on securities originally purchased subsequent to December 31, 1994,

shall not be used to purchase another security with a maturity longer than 92 days from the initial settlement date of the reverse repurchase agreement, unless the reverse repurchase agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement and the final maturity date of the same security. Reverse repurchase agreements specified in subparagraph (B) of paragraph (3) may not be entered into unless the percentage restrictions specified in that subparagraph are met, including the total of any reverse repurchase agreements specified in subparagraph (A) of paragraph (3).

(5) Investments in reverse repurchase agreements or similar investments in which the local agency sells securities prior to purchase with a simultaneous agreement to repurchase the security, may only be made upon prior approval of the governing body of the local agency and shall only be made with primary dealers of the Federal Reserve Bank of New York.

(6) (A) "Repurchase agreement" means a purchase of securities by the local agency pursuant to an agreement by which the counterparty seller will repurchase the securities on or before a specified date and for a specified amount and the counterparty will deliver the underlying securities to the local agency by book entry, physical delivery, or by third party custodial agreement. The transfer of underlying securities to the counterparty bank's customer book-entry account may be used for book-entry delivery.

(B) "Securities," for purpose of repurchase under this subdivision, means securities of the same issuer, description, issue date, and maturity.

(C) "Reverse repurchase agreement" means a sale of securities by the local agency pursuant to an agreement by which the local agency will repurchase the securities on or before a specified date, and includes other comparable agreements.

(D) For purposes of this section, the base value of the local agency's pool portfolio shall be that dollar amount obtained by totaling all cash balances placed in the pool by all pool participants, excluding any amounts obtained through selling securities by way of reverse repurchase agreements or other similar borrowing methods.

(E) For purposes of this section, the spread is the difference between the cost of funds obtained using the reverse repurchase agreement and the earnings obtained on the reinvestment of the funds.

(j) Medium-term notes of a maximum of five years' maturity issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States. Notes eligible for investment under this subdivision shall be rated in a rating category of "A" or its equivalent or better by a nationally recognized rating service. Purchases of medium-term notes may not exceed 30 percent

of the agency's surplus money which may be invested pursuant to this section.

(k) (1) Shares of beneficial interest issued by diversified management companies that invest in the securities and obligations as authorized by subdivisions (a) to (j), inclusive, or subdivision (*l*) or (m) and that comply with the investment restrictions of this article and Article 1 (commencing with Section 53600). However, notwithstanding these restrictions, a counterparty to a reverse repurchase agreement is not required to be a primary dealer of the Federal Reserve Bank of New York if the company's board of directors finds that the counterparty presents a minimal risk of default, and the value of the securities underlying a repurchase agreement may be 100 percent of the sales price if the securities are marked to market daily.

(2) Shares of beneficial interest issued by diversified management companies that are money market funds registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.).

(3) If investment is in shares issued pursuant to paragraph (1), the company shall have met either of the following criteria:

(A) Attained the highest ranking or the highest letter and numerical rating provided by not less than two nationally recognized statistical rating organizations.

(B) Retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission with not less than five years' experience investing in the securities and obligations authorized by subdivisions (a) to (j), inclusive, or subdivision (*l*) or (m) and with assets under management in excess of five hundred million dollars ($500,000,000).

(4) If investment is in shares issued pursuant to paragraph (2), the company shall have met either of the following criteria:

(A) Attained the highest ranking or the highest letter and numerical rating provided by not less than two nationally recognized statistical rating organizations.

(B) Retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission with not less than five years' experience managing money market mutual funds with assets under management in excess of five hundred million dollars ($500,000,000).

(5) The purchase price of shares of beneficial interest purchased pursuant to this subdivision shall not include any commission that the companies may charge and shall not exceed 20 percent of the agency's surplus money that may be invested pursuant to this section. However, no more than 10 percent of the agency's surplus funds may be invested in shares of beneficial interest of any one mutual fund pursuant to paragraph (1).

(*l*) Notes, bonds, or other obligations which are at all times secured by a valid first priority security interest in securities of the

types listed by Section 53651 as eligible securities for the purpose of securing local agency deposits having a market value at least equal to that required by Section 53652 for the purpose of securing local agency deposits. The securities serving as collateral shall be placed by delivery or book entry into the custody of a trust company or the trust department of a bank which is not affiliated with the issuer of the secured obligation, and the security interest shall be perfected in accordance with the requirements of the Uniform Commercial Code or federal regulations applicable to the types of securities in which the security interest is granted.

(m) Any mortgage pass-through security, collateralized mortgage obligation, mortgage-backed or other pay-through bond, equipment lease-backed certificate, consumer receivable pass-through certificate, or consumer receivable-backed bond of a maximum of five years maturity. Securities eligible for investment under this subdivision shall be issued by an issuer having an "A" or higher rating for the issuer's debt as provided by a nationally recognized rating service and rated in a rating category of "AA" or its equivalent or better by a nationally recognized rating service. Purchase of securities authorized by this subdivision may not exceed 20 percent of the agency's surplus money that may be invested pursuant to this section.

SEC. 2. Section 53637 of the Government Code is amended to read:

53637. The money shall be deposited in any bank, savings association or federal association, state or federal credit union, or federally insured industrial loan company with the objective of realizing maximum return, consistent with prudent financial management, except that money shall not be deposited in any state or federal credit union if a member of the legislative body of a local agency, or any person with investment decisionmaking authority of the administrative office, manager's office, budget office, auditor-controller's office, or treasurer's office of the local agency, also serves on the board of directors, or any committee appointed by the board of directors, or the credit committee or supervisory committee, of the state or federal credit union.

SEC. 3. Section 53648 of the Government Code is amended to read:

53648. Notwithstanding this article, the treasurer may deposit moneys in, and enter into contracts with, a state or national bank, savings association or federal association, federal or state credit union, or federally insured industrial loan company, pursuant to a federal law or a rule of a federal department or agency adopted pursuant to the law if the law or rule conflicts with this article in regulating the payment of interest on deposits of public moneys by any of the following:

(a) Banks which are Federal Reserve System members or whose deposits are insured by the Federal Deposit Insurance Corporation.

(b) Savings associations or federal associations which are federal home loan bank members or whose deposits are insured by the Federal Savings and Loan Insurance Corporation.

(c) State or federal credit unions whose accounts are insured by the National Credit Union Share Insurance Fund or guaranteed by the California Credit Union Share Guaranty Corporation or insured or guaranteed pursuant to Section 14858 of the Financial Code, unless a member of the legislative body of a local agency, or any person with investment decisionmaking authority of the administrative office, manager's office, budget office, auditor-controller's office, or treasurer's office of the local agency, also serves on the board of directors, or any committee appointed by the board of directors, or the credit committee or supervisory committee, of the state or federal credit union.

(d) A federally insured industrial loan company.

CHAPTER 82

An act to amend Section 53646 of the Government Code, relating to local agencies.

[Approved by Governor June 25, 1998. Filed with Secretary of State June 26, 1998.]

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

SECTION 1. Section 53646 of the Government Code is amended to read:

53646. (a) (1) In the case of county government, the treasurer shall annually render to the board of supervisors and any oversight committee a statement of investment policy, which the board shall review and approve at a public meeting. Any change in the policy shall also be reviewed and approved by the board at a public meeting.

(2) In the case of any other local agency, the treasurer or chief fiscal officer of the local agency shall annually render to the legislative body of that local agency and any oversight committee of that local agency a statement of investment policy, which the legislative body of the local agency shall consider at a public meeting. Any change in the policy shall also be considered by the legislative body of the local agency at a public meeting.

(b) (1) The treasurer or chief fiscal officer shall render a quarterly report to the chief executive officer, the internal auditor, and the legislative body of the local agency. The quarterly report shall be so submitted within 30 days following the end of the quarter covered by the report. Except as provided in subdivisions (e) and (f), this report shall include the type of investment, issuer, date of maturity par and dollar amount invested on all securities,

investments and moneys held by the local agency, and shall additionally include a description of any of the local agency's funds, investments, or programs, that are under the management of contracted parties, including lending programs. With respect to all securities held by the local agency, and under management of any outside party that is not also a local agency or the State of California Local Agency Investment Fund, the report shall also include a current market value as of the date of the report, and shall include the source of this same valuation.

(2) The quarterly report shall state compliance of the portfolio to the statement of investment policy, or manner in which the portfolio is not in compliance.

(3) The quarterly report shall include a statement denoting the ability of the local agency to meet its pool's expenditure requirements for the next six months, or provide an explanation as to why sufficient money shall, or may, not be available.

(4) In the quarterly report, a subsidiary ledger of investments may be used in accordance with accepted accounting practices.

(c) Pursuant to subdivision (b), the treasurer or chief fiscal officer shall report whatever additional information or data may be required by the legislative body of the local agency.

(d) The legislative body of a local agency may elect to require the report specified in subdivision (b) to be made on a monthly basis instead of quarterly.

(e) For local agency investments that have been placed in the Local Agency Investment Fund, created by Section 16429.1, in National Credit Union Share Insurance Fund-insured accounts in a credit union, in accounts insured or guaranteed pursuant to Section 14858 of the Financial Code, or in Federal Deposit Insurance Corporation-insured accounts in a bank or savings and loan association, in a county investment pool, or any combination of these, the treasurer or chief fiscal officer may supply to the governing body, chief executive officer, and the auditor of the local agency the most recent statement or statements received by the local agency from these institutions in lieu of the information required by paragraph (1) of subdivision (b) regarding investments in these institutions.

(f) The treasurer or chief fiscal officer shall not be required to render a quarterly report, as required by subdivision (b), to a legislative body or any oversight committee of a school district or county office of education for securities, investments, or moneys held by the school district or county office of education in individual accounts that are less than twenty-five thousand dollars ($25,000).

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CHAPTER 83

An act to amend Section 21382 of, to add Section 21377.5 to, and to repeal Section 21379 of, the Water Code, relating to irrigation districts.

[Approved by Governor June 25, 1998. Filed with Secretary of State June 26, 1998.]

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

SECTION 1. Section 21377.5 is added to the Water Code, to read:

21377.5. (a) Notwithstanding Section 21377 of this code or Section 54954 of the Government Code or any other provision of law, the Board of Directors of the Tri-Dam Project, which is composed of the directors of the Oakdale Irrigation District and the South San Joaquin Irrigation District, may hold no more than four regular meetings annually at the Tri-Dam Project offices located in Strawberry, California.

(b) The notice and conduct of these meetings shall comply with the provisions of the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

SEC. 2. Section 21379 of the Water Code is repealed.

SEC. 3. Section 21382 of the Water Code is amended to read:

21382. All meetings of the board shall be public and shall be conducted 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).

CHAPTER 84

An act to amend Section 31015 of the Streets and Highways Code, relating to bridges.

[Approved by Governor June 25, 1998. Filed with Secretary of State June 26, 1998.]

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

SECTION 1. Section 31015 of the Streets and Highways Code is amended to read:

31015. (a) Revenues generated from the surcharge shall not exceed nine hundred seven million dollars ($907,000,000), unless any of the following occurs:

(1) After completing 30 percent of the design, and after completion of a cost estimate by the department, the authority

selects a design that costs more than the cost of a single tower cable suspension bridge selected by the department.

(2) The authority requests funding for the replacement or relocation of the transbay bus terminal in the City and County of San Francisco.

(3) The authority requests funding for a bicycle or pedestrian access that is to be added to either the new east span of the San Francisco-Oakland Bay Bridge or the retrofitted west span of that bridge, or both.

(b) If the authority does any of the things listed in paragraphs (1) to (3), inclusive, of subdivision (a), the local share of the project costs shall be increased by an amount equal to any additional costs that are incurred as a result of the authority's decision.

(c) The department shall include the amenities requested by the authority only if sufficient funds generated by the seismic retrofit surcharge are made available to fully pay for those amenities.

CHAPTER 85

An act to add Section 107.9 to the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 30, 1998. Filed with Secretary of State June 30, 1998.]

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

SECTION 1. Section 107.9 is added to the Revenue and Taxation Code, to read:

107.9. (a) In addition to any taxable real property interests that an operator of certificated aircraft has at a publicly owned airport that are interests stated in a written agreement for terminal, cargo, hangar, automobile parking lot, storage and maintenance facilities and other buildings and the land thereunder leased in whole or in part by an airline (hereafter the "excluded possessory interests"), there exists an additional taxable possessory interest conferred upon an operator of certificated aircraft at a publicly owned airport.

(b) Notwithstanding any other provision of law relating to valuation, for assessments for the 1998–99 fiscal year, and each fiscal year thereafter, (1) regular assessments of all taxable real property interests of the operator of certificated aircraft at a publicly owned airport, other than the excluded possessory interests, and (2) timely escape assessments upon the real property interests governed by this section issued on or after April 1, 1998, pursuant to Sections 531 and 531.2, shall be presumed to be valued and assessed at full cash value

for these interests only if the assessor uses the following direct income approach in capitalizing net economic rent:

(1) The economic rent shall be computed by using one-half of the landing fee rate used to calculate the 1996–97 assessment for real property interests, other than excluded possessory interests, multiplied by the aggregate weight of landings by the operator for the airport's fiscal year prior to the 1996 lien date. The one-half of the landing fee rate used to compute the 1996–97 economic rent shall be annually adjusted in accordance with the percentage change, rounded to the nearest one-thousandth of 1 percent, from October of the prior fiscal year to October of the current fiscal year in the California Consumer Price Index for all items, as determined by the California Department of Industrial Relations, except that in no instance shall this adjusted rate exceed one-half of the airport's actual landing fee rate for the last full fiscal year. The economic rent shall also be adjusted in proportion to the increase or decrease in the aggregate weight of landings by the operator for the last full fiscal year at each airport in the taxing county. In the case of a new operator, the economic rent shall be determined by reference to a similarly situated operator.

(2) The expense ratio shall be the ratio used by each county for the 1996 lien date.

(3) The capitalization rates shall not exceed, or be less than, the rates used by each county for the 1996 lien date, except that they shall be annually adjusted in proportion to the changes in the "Going-in Cap Rate; All Types" as published by the Real Estate Research Corporation, and, as so adjusted, shall be rounded to the nearest one-half percent. If this information ceases to be published by the Real Estate Research Corporation or the format significantly changes, a publication or adjustment agreed to by the airlines and the taxing counties shall be substituted.

(4) The term of possession for each operator shall be the term used by each county to calculate the 1996–97 assessment, but shall not exceed a maximum term of 20 years. Subject to paragraphs (1) to (3), inclusive, of subdivision (b) of Section 61 as applied to interests subject to this subdivision, changes of ownership and term of possessions shall be determined as follows:

(A) In the case of the creation, renewal, extension or assignment of an operating agreement or permit, without the concurrent creation, renewal, extension or assignment of a terminal, hangar, or cargo facility agreement, no change in ownership will be presumed to have occurred and the term of possession shall be the term used by each county for their 1996–97 assessments, not to exceed a maximum of 20 years.

(B) In the case of the creation, renewal, extension or assignment of a terminal, hangar, or cargo facility agreement, a change in ownership will be presumed to have occurred and the term of possession shall be the actual term stated in the written terminal,

hangar, or cargo facility agreement, provided that the term shall not be less than 10 years or exceed 15 years.

(C) In the case of any operator without a terminal, hangar, or cargo facility agreement, the actual creation, renewal, extension or assignment of a written operating agreement or permit shall constitute a change in ownership and the actual term of the operating agreement for that carrier will be used, provided that the term shall not be less than 5 years or exceed more than 15 years.

(5) Nothing in this subdivision is intended to apply to the determination of a term of possession for a possessory interest in an excluded possessory interest.

(c) Notwithstanding subdivision (b), in a county in which 1995–96 landing fees were not used to calculate the 1996–97 assessment, the county shall benefit from the presumption of correctness set forth in subdivision (b) only if the assessor uses the following direct income approach in capitalizing net economic rent:

(1) The calculations required in subdivision (b) are performed using the assessment that would have been derived in the 1996–97 fiscal year had the assessor followed the methodology set forth in subdivision (b) using actual airport data for the 1995–96 fiscal year.

(2) If any portion of the airport's landing fee rate for the 1995–96 fiscal year was in dispute and resulted in the creation of an escrow account for a portion of the landing fees paid, that portion of the landing fee rate attributable to the escrowed funds shall not be included in the calculations performed in paragraph (1). However, if the dispute is resolved, in whole or in part, in favor of the publicly owned airport and all or a portion of the escrowed funds are released to the airport, the assessor shall, without regard to any other statutorily imposed time limitation, be entitled to recalculate the assessments required by this subdivision using an adjusted landing fee rate that reflects a final decision on the disposition of escrowed funds to produce escape assessments for all affected years.

(d) Value shall be determined as follows:

(1) Economic rent shall be calculated by applying the expense ratio described in paragraph (2) of subdivision (b) to reduce gross income determined pursuant to paragraph (1) of subdivision (b) or (c) and paragraph (2) of subdivision (c) to arrive at an amount that shall be deemed to be equivalent to economic rent.

(2) Economic rent, as so determined, shall be capitalized for the term provided for in paragraph (4) of subdivision (b) at the capitalization rate determined in accordance with paragraph (3) of subdivision (b).

(e) Assessments under this section shall not exceed the factored base year value established under Article XIII A of the California Constitution. However, adjustments made in aggregate landing weights under this section are deemed to be a valid basis for adjusting the base year value to the extent of the percentage change in landed weights for purposes of Article XIII A of the California Constitution.

Pursuant to Section 65.1, adjustments in aggregate landing weights shall not be considered a change in ownership or a basis for applying a new term of possession in the airlines' preexisting real property interest.

SEC. 2. This act shall become operative only if Assembly Bill 1807 becomes effective on or before January 1, 1999, and in that event shall become operative on the later of the effective date of this act and the effective date of Assembly Bill 1807.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

This measure is necessary to provide guidance and clarification that is essential to the fair and efficient taxation of airline industry property and possessory interests in publicly owned airports in the current year, and to clarify the status of prior-year property tax payments that have funded essential services provided by local governments and schools.

CHAPTER 86

An act to add Sections 401.15 and 5096.3 to the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 30, 1998. Filed with Secretary of State June 30, 1998.]

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

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

(1) Two of the most difficult and contentious property tax assessment issues in recent years have concerned the assessment of certificated aircraft and airline possessory interests, other than interests stated in a written agreement for terminal, cargo, hangar, automobile parking lots, storage and maintenance facilities and other buildings and the land thereunder leased in whole or in part by an airline.

(2) These issues have given rise to litigation and appeals challenging assessments involving hundreds of millions of dollars of property tax revenues.

(3) The uncertainty created by pending litigation and appeals over the assessment of airline property and possessory interests in publicly owned airports is disruptive to both airline industry tax planning and local government and school finance.

(b) It is the intent of the Legislature in enacting this act to facilitate resolution of the disputes over the assessment of certificated aircraft by codifying recommendations produced by a county and airline industry working group, that do all of the following:

(1) Establish valuation methodology for certificated aircraft.

(2) Clearly establish a presumption of correctness if county assessors follow the assessment methodology set out in this measure and in Assembly Bill 2318.

(3) Dispose of certain outstanding litigation and appeals over aircraft valuation.

(4) Mitigate the financial impact of this statutory change on local governments and schools by establishing a method by which the issuance of any prior year refunds to litigating airlines would be treated as credits against future tax payments.

SEC. 2. Section 401.15 is added to the Revenue and Taxation Code, to read:

401.15. (a) Notwithstanding any other provision of law, for any county that makes available the credits provided for in Section 5096.3, the full cash values of certificated aircraft for fiscal years to the 1997–98 fiscal year, inclusive, are presumed to be those values enrolled by the county assessor or, in the case of timely escape assessments upon certificated aircraft issued on or after April 1, 1998, pursuant to Sections 531, 531.3, and 531.4, the values enrolled upon those escape assessments, provided the escape assessment is made in accordance with the methodology in subdivision (b). For escape assessments for fiscal years to the 1997–98 fiscal year, inclusive, the assessor shall use the methodology and minimum and market values set by the California Assessors' Association for the applicable fiscal year in lieu of the methodology set forth in subparagraph (C) or (D) of paragraph (1) of subdivision (b). The assessor is not required to revise or change existing enrolled assessments that are not subject to escape assessment to reflect the methodology in this section. Nothing in this section precludes audit adjustments and offsets as set forth in Section 469 or the correction of reporting errors raised by an airline. Nothing in this section affects any presumption of correctness concerning allocation of aircraft values.

(b) (1) For the 1998–99 fiscal year to the 2002–03 fiscal year, inclusive, and including escape assessments levied on or after April 1, 1998, for any fiscal year to the 2002–03 fiscal year, inclusive, except as otherwise provided in subdivision (a), certificated aircraft shall be presumed to be valued at full market value if all of the following conditions are met:

(A) Except as provided in subparagraph (D), value is derived using original cost. The original cost shall be the greater of the following:

(i) Taxpayer's cost for that individual aircraft reported in accordance with generally accepted accounting principles, so long as that produces net acquisition cost, and to the extent not included in

the taxpayer's cost, transportation costs and capitalized interest and the cost of any capital addition or modification made before a transaction described in clause (ii).

(ii) The cost established in a sale/leaseback or assignment of purchase rights transaction for that individual aircraft that transfers the benefits and burdens of ownership to the lessor for United States federal income tax purposes.

If the original cost for leased aircraft cannot be determined from information reasonably available to the taxpayer, original cost may be determined by reference to the "average new prices" column of the Airliner Price Guide for that model, series, and year of manufacture of aircraft. If information is not available in the "average new prices" column for that model, series, and year, the original cost may be determined using the best indicator of original cost plus all conversion costs incurred for that aircraft. In the event of a merger, bankruptcy, or change in accounting methods by the reporting airline, there shall be a rebuttable presumption that the cost of the individual aircraft and the acquisition date reported by the acquired company if available, or the cost reported prior to the change in accounting method is the original cost and the applicable acquisition date.

(B) Original cost, plus the cost of any capital additions or modifications not otherwise included in the original cost, shall be adjusted from the date of the acquisition of the aircraft to the lien date using the producer price index for aircraft and a 16-year straight-line percent good table starting from the delivery date of the aircraft to the current owner or, in the case of a sale/leaseback or assignment of purchase rights transaction, as described in this section, the current operator with a minimum combined factor of 25 percent, unless this adjustment results in a value less than the minimum value for that aircraft computed pursuant to subparagraph (C), in which case the minimum value may be used. If original cost is determined by reference to the Airliner Price Guide "average new prices" column, the adjustments required by this paragraph shall be made by setting the acquisition date of the aircraft to be the date of the aircraft's manufacture.

(C) For certificated aircraft of a model and series that has been in revenue service for eight or more years, the minimum value shall not exceed the average of the used aircraft prices shown in columns other than the "average new prices" column for used aircraft of the oldest aircraft for that model and series in the Airliner Price Guide most recently published as of the lien date. Minimum values shall not be utilized for certificated aircraft of a model and series that has been in revenue service for less than eight years.

(D) For out-of-production aircraft that were recommended to be valued by a market approach for 1998 by the California Assessors' Association, assessments will be based at the lower of the following:

(i) The values established by the Association for the 1998 lien date.

(ii) The average of the used aircraft prices shown in the columns other than the "average new prices" column for used aircraft of the five oldest years for the aircraft model and series or that lesser time for which data is available in the Airliner Price Guide.

(2) Notwithstanding paragraph (1), in computing assessed value, the assessor may allow for extraordinary obsolescence if supported by market evidence and the taxpayer may challenge the assessment for failure to do so. To constitute market evidence of extraordinary obsolescence and to permit an assessment appeal, the evidence must show that the functional and or economic obsolescence is in excess of 10 percent of the value for the aircraft model and series otherwise established pursuant to subparagraph (B), (C), or (D) of paragraph (1).

(3) For purposes of paragraph (1), if the Airliner Price Guide ceases to be published or the format significantly changes, a guide or adjustment agreed to by the airlines and the taxing counties shall be substituted.

(c) (1) For the 2003–04 fiscal year, certificated aircraft shall be presumed to be valued at full market value if all of the following conditions are met:

(A) Except as provided in subparagraph (D), value is derived using original cost. The original cost shall be the greater of the following:

(i) Taxpayer's cost for that individual aircraft reported in accordance with generally accepted accounting principles, so long as that produces net acquisition cost, and to the extent not included in the taxpayer's cost, transportation costs and capitalized interest and the cost of any capital addition or modification made before a transaction described in clause (ii).

(ii) Taxpayer's cost as established pursuant to this subdivision plus one-half of the incremental difference between taxpayer's cost and the cost established in a sale/leaseback or assignment of purchase rights transaction for individual aircraft that transfers the benefits and burdens of ownership to the lessor for United States federal income tax purposes.

If the original cost for leased aircraft cannot be determined from information reasonably available to the taxpayer, original cost may be determined by reference to the "average new prices" column of the Airliner Price Guide for that model, series, and year of manufacture of aircraft. If information is not available in the "average new prices" column for that model, series, and year, the original cost may be determined using the best indicator of original cost plus all conversion costs incurred for that aircraft. In the event of a merger, bankruptcy, or change in accounting methods by the reporting airline, there shall be a rebuttable presumption that the cost of the individual aircraft and the acquisition date reported by the acquired company if available, or the cost reported prior to the

change in accounting method is the original cost and the applicable acquisition date.

(B) Original cost, plus the cost of any capital additions or modifications not otherwise included in original cost, shall be adjusted from the date of the acquisition of the aircraft to the lien date using the producer price index for aircraft and a 16-year straight-line percent good table starting from the delivery date of the aircraft to the current owner or, in the case of a sale/leaseback or assignment of purchase rights transaction, as described in this section, the current operator with a minimum combined factor of 25 percent, unless this adjustment results in a value less than the minimum value for that aircraft computed pursuant to subparagraph (C), in which case the minimum value may be used. If original cost is determined by reference to the Airliner Price Guide "average new prices" column, the adjustments required by this paragraph shall be made by setting the acquisition date of the aircraft to be the date of the aircraft's manufacture.

(C) For certificated aircraft of a model and series that has been in revenue service for eight or more years, the minimum value shall not exceed the average of the used aircraft prices shown in columns other than the "average new prices" column for used aircraft of the oldest aircraft for that model and series in the Airliner Price Guide most recently published as of the lien date. Minimum values shall not be utilized for certificated aircraft of a model and series that has been in revenue service for less than eight years.

(D) For out-of-production aircraft that were recommended to be valued by a market approach for 1998 by the California Assessors' Association their assessments shall be based at the lower of the following:

(i) The values established by the Association for the 1998 lien date.

(ii) The average of the used aircraft prices shown in the columns other than the "average new prices" column for used aircraft of the five oldest years for the aircraft model and series or that lesser time for which data is available in the Airliner Price Guide.

(2) Notwithstanding paragraph (1), in computing assessed value, the assessor may allow for extraordinary obsolescence if supported by market evidence and the taxpayer may challenge the assessment for failure to do so. To constitute market evidence of extraordinary obsolescence and to permit an assessment appeal, the evidence must show that the functional and or economic obsolescence is in excess of 10 percent of the value for the aircraft model and series otherwise established pursuant to subparagraph (B), (C), or (D) of paragraph (1).

(3) For purposes of paragraph (1), if the Airliner Price Guide ceases to be published or the format significantly changes, a guide or adjustment agreed to by the airlines and the taxing counties shall be substituted.

(d) In order to calculate the values prescribed in subdivisions (b) and (c), the taxpayer shall, to the extent that information is reasonably available to the taxpayer, furnish the county assessor with an annual property statement that includes the aircraft original costs as defined in subparagraph (A) of paragraph (1) of subdivision (b) or (c). In the event an air carrier that has this information reasonably available to it fails to report original cost and additions, as required by Revenue and Taxation Code Sections 441 and 442, an assessor may in that case make an appropriate assessment pursuant to Revenue and Taxation Code Section 501.

SEC. 3. Section 5096.3 is added to the Revenue and Taxation Code, to read:

5096.3. (a) To dispose of certain lawsuits and assessment appeals that have been filed, and to preclude the filing of other claims relating to (1) the assessment, equalization, and assessability of certain possessory interests in publicly owned airports and (2) aircraft valuation and equalization by Alaska Airlines, Inc., American Airlines, Inc., Continental Airlines, Inc., Delta Air Lines, Inc., Federal Express Corporation, Northwest Airlines, Inc., Trans World Airlines, Inc., United Airlines, Inc., United Parcel Service, U.S. Airways, Inc., Wings West Airlines, Southwest Airlines, America West Airlines, in their own right or as successors in interest, counties shall provide future tax credits in the following amounts:

Alameda	$ 4,455,110
Contra Costa	1,000
El Dorado	1,000
Fresno	264,630
Humboldt	500
Kern	33,540
Los Angeles	18,335,720
Monterey	148,560
Orange	2,916,995
Riverside	435,780
Sacramento	1,070,185
San Bernardino	1,991,405
San Diego	4,262,610
San Joaquin	1,000
San Mateo	13,544,005
Santa Barbara	167,880
Santa Clara	2,369,080
Solano	1,000

(b) The credits identified in subdivision (a) will be allowed in equal amounts for the 1998–99 fiscal year to the 2002–03 fiscal year,

inclusive, and may be credited by the counties against one or more tax bills of the airline entitled to the credit. The credits identified in subdivision (a) shall be allocated among the airlines in accordance with a schedule to be established and agreed upon by the airlines identified in subdivision (a). The airlines shall, through a designated representative, provide to each county listed in subdivision (a), before the effective date of this measure, the detail of the allocation of the credits among the various airlines. In no instance shall a county be required to provide a credit to any airline in any year that exceeds the total tax due from that airline to that county for that year. The airlines' designated representative may submit revised instructions not later than June 30 preceding the beginning of the fiscal year in which the credits are to be adjusted, but in no event may the credit for any county in any year be increased beyond the levels set out in subdivisions (a) and (b) for any fiscal year.

(c) In addition to the credits provided in subdivision (a), each county shall allow a credit against any escape assessment upon certificated aircraft levied on or after April 1, 1998, under subdivision (b) of Section 401.15 for tax years up to and including the 1997–98 fiscal year to the extent the escape assessment is based upon the cost established in sale/leaseback or assignment of purchase rights transaction. The amount of the credit shall be equal to the tax on one-half of the value increase, plus interest and penalties attributable to use of the sale/leaseback or assignment of purchase rights transaction amount to determine value pursuant to subdivision (b) of Section 401.15.

(d) Upon enrollment of any escape assessment contemplated in subdivision (a) of Section 401.15, the county assessor shall provide the county auditor with the information necessary to calculate the credit required in subdivision (c) of this section.

(e) No county shall be required to provide the credits specified in subdivisions (a) and (b) unless all airlines named in subdivision (a) who also have assessments in that county have entered into a settlement agreement or executed a waiver with that county. No county shall be required to provide the credits specified in subdivision (c) unless the airline otherwise entitled to that credit has entered into a settlement agreement or executed a waiver with that county. The settlement agreement or waiver shall include a waiver of all statutory and constitutional rights with respect to pending and future challenges to valuation and equalization of certificated aircraft through the 2003–04 fiscal year, provided that the assessments are established in conformance with Section 401.15, and all statutory and constitutional rights to challenge valuation, equalization and assessability of possessory interests in publicly owned airports (other than interests stated in a written agreement for terminal, cargo, hangar, automobile parking lots, storage and maintenance facilities, and other buildings and the land thereunder leased in whole or in part by an airline), provided that the valuations made for the 1998–99

fiscal year and thereafter are established in conformance with Section 107.9. At the discretion of a county, the airlines may be required to file waivers in that county in lieu of entering into a settlement agreement. Upon the execution of a settlement agreement or waiver by the airlines named in subdivision (a) that also have assessments in a county, that county listed in subdivision (a) shall be required to provide the credits set out in this section. Nothing in this section precludes claims concerning allocation of aircraft values.

(f) With respect to America West Airlines only, the waiver or settlement agreement required by subdivision (e) may exclude the claims that America West Airlines has already raised in the adversary proceedings in the bankruptcy proceeding entitled "In Re America West Airlines, Inc., Case No. 91-07505 PHX-RGM" against the Counties of Orange, San Bernardino, Sacramento, San Mateo, Alameda, and San Diego, provided that the settlement agreements or waivers under subdivision (e) provide that the resolution of any of America West's adversary claims will have no legal effect for any tax year not at issue in those adversary proceedings. This section and Sections 107.9 and 401.15 do not abrogate, rescind, preclude, or otherwise affect any separate settlement agreement entered into prior to the effective date of this section between a county and an airline concerning the subject matter of this section and Sections 107.9 and 401.15 with respect to those tax years expressly settled by any agreement as so described. However, no settlement agreement as so described may be used to challenge the assessment and valuation provided by these sections for any tax year after the 1997–98 fiscal year or any tax year not expressly settled by that agreement.

SEC. 4. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique legal, fiscal, and administrative issues faced by the counties specified in this act with respect to unresolved disputes in those counties concerning the proper taxation of certificated aircraft.

SEC. 5. This act shall become operative only if Assembly Bill 2318 is enacted and becomes effective on or before January 1, 1999, and in that event shall become operative on the later of the effective date of this act and the effective date of Assembly Bill 2318.

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 California Constitution and shall go into immediate effect. The facts constituting the necessity are:

This measure is necessary to provide guidance and clarification that is essential to the fair and efficient taxation of airline industry property and possessory interests in publicly owned airports in the current year, and to clarify the status of prior-year property tax

payments that have funded essential services provided by local governments and schools.

CHAPTER 87

An act to add Section 5103 to the Revenue and Taxation Code, relating to taxation.

[Approved by Governor June 30, 1998. Filed with Secretary of State June 30, 1998.]

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

SECTION 1. Section 5103 is added to the Revenue and Taxation Code, to read:

5103. Notwithstanding any other provision of law, a taxpayer and the county or city and county may enter into a written settlement agreement to substitute credits against a taxpayer's future tax liabilities for the payment by the county or city and county to that taxpayer of refunds of tax and any interest accrued thereon. Interest may continue to accrue upon a substituted credit until that credit has been fully offset against future tax liabilities. The authority of a county or city and county to provide for tax credits in accordance with this section shall be vested in that branch of the county or city and county government that is authorized to settle legal disputes on behalf of the county or city and county.

CHAPTER 88

An act to amend Section 1094.5 of the Code of Civil Procedure, to amend Sections 3517.6, 18523.1, 18670, 18717, 18903, 19056.5, 19141, 19142, 19170.1, 19574, 19582, 19702, 19786, 19798, 19815.41, 19816.2, 19817, 19818.7, 19818.11, 19828, 19829, 19832, 19834, 19835, 19841, 19853.1, 19854, 19994, 19994.1, 19994.2, 19997, 19997.3, 19997.4, 19997.5, 19997.6, 19997.7, 19997.8, 19997.11, 19997.13, 20068, 20677, 20963, 21071, 21423, 22013.8, 22754, and 22955 of, and to add Sections 19173.1, 19175.3, 19570.1, 19572.1, 19576.2, 19582.1, 19582.6, 19608, 19816.20, 19826.1, 19836.1, 20037.5, 20405.1, 21073.5, 21073.6, 21353.5, and 22754.5 to, the Government Code, and to amend Sections 10295 and 10430 of, and to add Section 10344.1 to, the Public Contract Code, relating to public employees, and making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 30, 1998. Filed with Secretary of State June 30, 1998.]

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

SECTION 1. The Legislature finds and declares that the purpose of Section 2 is to adopt an agreement pursuant to Section 3517 of the Government Code entered into by the state employer and recognized employee organizations to make any necessary statutory changes in health, retirement, salary, or other benefits.

SEC. 2. The provisions of the memorandum of understanding, prepared pursuant to Section 3517.5 of the Government Code, and entered into by the state employer and State Bargaining Unit 16, the Union of American Physicians and Dentists, and that requires the expenditure of funds or legislative action to permit their implementation, are hereby approved for the purposes of Section 3517.6 of the Government Code.

SEC. 3. Any provision in a memorandum of understanding approved by Section 2 that is scheduled to take effect on or after July 1, 1998, 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. 4. Notwithstanding Section 3517.6 of the Government Code, the provisions of any memorandum of understanding that requires 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. 5. Section 1094.5 of the Code of Civil Procedure is amended to read:

1094.5. (a) Where the writ is issued for the purpose of inquiring into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer, the case shall be heard by the court sitting without a jury. All or part of the record of the proceedings before the inferior tribunal, corporation, board, or officer may be filed with the petition, may be filed with respondent's points and authorities, or may be ordered to be filed by the court. Except when otherwise prescribed by statute, the cost of preparing the record shall be borne by the petitioner. Where the petitioner has proceeded pursuant to Section 68511.3 of the Government Code and the Rules of Court implementing that section and where the transcript is necessary to a proper review of the administrative proceedings, the cost of preparing the transcript shall be borne by the respondent. Where the party seeking the writ has proceeded pursuant to Section 1088.5, the administrative record shall be filed as expeditiously as possible, and may be filed with the petition, or by the respondent after payment

of the costs by the petitioner, where required, or as otherwise directed by the court. If the expense of preparing all or any part of the record has been borne by the prevailing party, the expense shall be taxable as costs.

(b) The inquiry in such a case shall extend to the questions whether the respondent has proceeded without, or in excess of jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.

(c) Where it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence. In all other cases, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.

(d) Notwithstanding subdivision (c), in cases arising from private hospital boards or boards of directors of districts organized pursuant to The Local Hospital District Law, Division 23 (commencing with Section 32000) of the Health and Safety Code or governing bodies of municipal hospitals formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Division 3 of Title 4 of the Government Code, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record. However, in all cases in which the petition alleges discriminatory actions prohibited by Section 1316 of the Health and Safety Code, and the plaintiff makes a preliminary showing of substantial evidence in support of that allegation, the court shall exercise its independent judgment on the evidence and abuse of discretion shall be established if the court determines that the findings are not supported by the weight of the evidence.

(e) Where the court finds that there is relevant evidence that, in the exercise of reasonable diligence, could not have been produced or that was improperly excluded at the hearing before respondent, it may enter judgment as provided in subdivision (f) remanding the case to be reconsidered in the light of that evidence; or, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, the court may admit the evidence at the hearing on the writ without remanding the case.

(f) The court shall enter judgment either commanding respondent to set aside the order or decision, or denying the writ. Where the judgment commands that the order or decision be set aside, it may order the reconsideration of the case in the light of the court's opinion and judgment and may order respondent to take such

further action as is specially enjoined upon it by law, but the judgment shall not limit or control in any way the discretion legally vested in the respondent.

(g) Except as provided in subdivision (h), the court in which proceedings under this section are instituted may stay the operation of the administrative order or decision pending the judgment of the court, or until the filing of a notice of appeal from the judgment or until the expiration of the time for filing the notice, whichever occurs first. However, no such stay shall be imposed or continued if the court is satisfied that it is against the public interest. The application for the stay shall be accompanied by proof of service of a copy of the application on the respondent. Service shall be made in the manner provided by Title 5 (commencing with Section 405) of Part 2 or Chapter 5 (commencing with Section 1010) of Title 14 of Part 2. If an appeal is taken from a denial of the writ, the order or decision of the agency shall not be stayed except upon the order of the court to which the appeal is taken. However, in cases where a stay is in effect at the time of filing the notice of appeal, the stay shall be continued by operation of law for a period of 20 days from the filing of the notice. If an appeal is taken from the granting of the writ, the order or decision of the agency is stayed pending the determination of the appeal unless the court to which the appeal is taken shall otherwise order. Where any final administrative order or decision is the subject of proceedings under this section, if the petition shall have been filed while the penalty imposed is in full force and effect, the determination shall not be considered to have become moot in cases where the penalty imposed by the administrative agency has been completed or complied with during the pendency of the proceedings.

(h) (1) The court in which proceedings under this section are instituted may stay the operation of the administrative order or decision of any licensed hospital or any state agency made after a hearing required by statute to be conducted under the Administrative Procedure Act, as set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, conducted by the agency itself or an administrative law judge on the staff of the Office of Administrative Hearings pending the judgment of the court, or until the filing of a notice of appeal from the judgment or until the expiration of the time for filing the notice, whichever occurs first. However, the stay shall not be imposed or continued unless the court is satisfied that the public interest will not suffer and that the licensed hospital or agency is unlikely to prevail ultimately on the merits. The application for the stay shall be accompanied by proof of service of a copy of the application on the respondent. Service shall be made in the manner provided by Title 5 (commencing with Section 405) of Part 2 or Chapter 5 (commencing with Section 1010) of Title 14 of Part 2.

(2) The standard set forth in this subdivision for obtaining a stay shall apply to any administrative order or decision of an agency that issues licenses pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code or pursuant to the Osteopathic Initiative Act or the Chiropractic Initiative Act. With respect to orders or decisions of other state agencies, the standard in this subdivision shall apply only when the agency has adopted the proposed decision of the administrative law judge in its entirety or has adopted the proposed decision but reduced the proposed penalty pursuant to subdivision (b) of Section 11517 of the Government Code; otherwise the standard in subdivision (g) shall apply.

(3) If an appeal is taken from a denial of the writ, the order or decision of the hospital or agency shall not be stayed except upon the order of the court to which the appeal is taken. However, in cases where a stay is in effect at the time of filing the notice of appeal, the stay shall be continued by operation of law for a period of 20 days from the filing of the notice. If an appeal is taken from the granting of the writ, the order or decision of the hospital or agency is stayed pending the determination of the appeal unless the court to which the appeal is taken shall otherwise order. Where any final administrative order or decision is the subject of proceedings under this section, if the petition shall have been filed while the penalty imposed is in full force and effect, the determination shall not be considered to have become moot in cases where the penalty imposed by the administrative agency has been completed or complied with during the pendency of the proceedings.

(i) Any administrative record received for filing by the clerk of the court may be disposed of as provided in Sections 1952, 1952.2, and 1952.3.

(j) Effective January 1, 1996, this subdivision shall apply to state employees in State Bargaining Unit 5. Effective June 1, 1998, this subdivision shall apply to state employees in State Bargaining Unit 16. For purposes of this section, the court is not authorized to review any disciplinary decisions reached pursuant to Section 19576.1 or 19576.2 of the Government Code.

SEC. 6. Section 3517.6 of the Government Code is amended to read:

3517.6. (a) (1) In any case where the provisions of Section 70031 of the Education Code, or subdivision (i) of Section 3513, or Section 14876, 18714, 19080.5, 19100, 19143, 19261, 19818.16, 19819.1, 19820, 19822, 19824, 19826, 19827, 19828, 19829, 19830, 19831, 19832, 19833, 19834, 19835, 19836, 19837, 19838, 19839, 19840, 19841, 19842, 19843, 19844, 19845, 19846, 19847, 19848, 19849, 19849.1, 19849.4, 19850.1, 19850.2, 19850.3, 19850.4, 19850.5, 19850.6, 19851, 19853, 19854, 19856, 19856.1, 19858.1, 19858.2, 19859, 19860, 19861, 19862, 19862.1, 19863, 19863.1, 19864, 19866, 19869, 19870, 19871, 19871.1, 19872, 19873, 19874, 19875, 19876, 19877, 19877.1, 19878, 19879, 19880, 19880.1, 19881, 19882, 19883, 19884, 19885, 19887, 19887.1, 19887.2, 19888, 19990, 19991,

19991.1, 19991.2, 19991.3, 19991.4, 19991.5, 19991.6, 19991.7, 19992, 19992.1, 19992.2, 19992.3, 19992.4, 19993, 19994.1, 19994.2, 19994.3, 19994.4, 19995, 19995.1, 19995.2, 19995.3, 19996.1, 19996.2, 19998, 19998.1, 20750.11, 21400, 21402, 21404, 21405, 22825, or 22825.1 are in conflict with the provisions of a memorandum of understanding, the memorandum of understanding shall be controlling without further legislative action.

(2) Notwithstanding paragraph (1), this paragraph shall apply only to state employees in State Bargaining Unit 5. In any case where the provisions of Section 70031 of the Education Code, or subdivision (i) of Section 3513, or Section 14876, 18714, 19080.5, 19100, 19143, 19261, 19576.1, 19818.16, 19819.1, 19820, 19822, 19824, 19826, 19827, 19828, 19829, 19830, 19831, 19832, 19833, 19834, 19835, 19836, 19837, 19838, 19839, 19840, 19841, 19842, 19843, 19844, 19845, 19846, 19847, 19848, 19849, 19849.1, 19849.4, 19850.1, 19850.2, 19850.3, 19850.4, 19850.5, 19850.6, 19851, 19853, 19854, 19856, 19856.1, 19858.1, 19858.2, 19859, 19860, 19861, 19862, 19862.1, 19863, 19863.1, 19864, 19866, 19869, 19870, 19871, 19871.1, 19872, 19873, 19874, 19875, 19876, 19877, 19877.1, 19878, 19879, 19880, 19880.1, 19881, 19882, 19883, 19884, 19885, 19887, 19887.1, 19887.2, 19888, 19990, 19991, 19991.1, 19991.2, 19991.3, 19991.4, 19991.5, 19991.6, 19991.7, 19992, 19992.1, 19992.2, 19992.3, 19992.4, 19993, 19994.1, 19994.2, 19994.3, 19994.4, 19995, 19995.1, 19995.2, 19995.3, 19996.1, 19996.2, 19998, 19998.1, 20750.11, 21400, 21402, 21404, 21405, 22825, or 22825.1 are in conflict with the provisions of a memorandum of understanding, the memorandum of understanding shall be controlling without further legislative action.

(3) Notwithstanding paragraph (1), this paragraph shall apply only to state employees in State Bargaining Unit 16. In any case where the provisions of Section 70031 of the Education Code, or subdivision (i) of Section 3513, or Section 14876, 18714, 19080.5, 19100, 19143, 19261, 19576.1, 19582.1, 19175.1, 19818.16, 19819.1, 19820, 19822, 19824, 19826, 19827, 19828, 19829, 19830, 19831, 19832, 19833, 19834, 19835, 19836, 19837, 19838, 19839, 19840, 19841, 19842, 19843, 19844, 19845, 19846, 19847, 19848, 19849, 19849.1, 19849.4, 19850.1, 19850.2, 19850.3, 19850.4, 19850.5, 19850.6, 19851, 19853, 19854, 19856, 19856.1, 19858.1, 19858.2, 19859, 19860, 19861, 19862, 19862.1, 19863, 19863.1, 19864, 19866, 19869, 19870, 19871, 19871.1, 19872, 19873, 19874, 19875, 19876, 19877, 19877.1, 19878, 19879, 19880, 19880.1, 19881, 19882, 19883, 19884, 19885, 19887, 19887.1, 19887.2, 19888, 19990, 19991, 19991.1, 19991.2, 19991.3, 19991.4, 19991.5, 19991.6, 19991.7, 19992, 19992.1, 19992.2, 19992.3, 19992.4, 19993, 19994.1, 19994.2, 19994.3, 19994.4, 19995, 19995.1, 19995.2, 19995.3, 19996.1, 19996.2, 19998, 19998.1, 20750.11, 21400, 21402, 21404, 21405, 22825, or 22825.1 are in conflict with the provisions of a memorandum of understanding, the memorandum of understanding shall be controlling without further legislative action.

(b) In any case where the provisions of Section 19997.2, 19997.3, 19997.8, 19997.9, 19997.10, 19997.11, 19997.12, 19997.13, or 19997.14 are in conflict with the provisions of a memorandum of understanding,

the terms of the memorandum of understanding shall be controlling unless the State Personnel Board finds those terms to be inconsistent with merit employment principles as provided for by Article VII of the California Constitution. Where this finding is made, the provisions of the Government Code shall prevail until those affected sections of the memorandum of understanding are renegotiated to resolve the inconsistency. If any provision of the memorandum of understanding requires the expenditure of funds, those provisions of the memorandum of understanding shall not become effective unless approved by the Legislature in the annual Budget Act. If any provision of the memorandum of understanding requires legislative action to permit its implementation by amendment of any section not cited above, those provisions of the memorandum of understanding shall not become effective unless approved by the Legislature.

SEC. 7. Section 18523.1 of the Government Code is amended to read:

18523.1. (a) Notwithstanding Section 18523, this section shall apply to state employees in State Bargaining Unit 6 or 16.

(b) "Class" means a group of positions sufficiently similar with respect to duties and responsibilities that the same title may reasonably and fairly be used to designate each position allocated to the class and that substantially the same tests of fitness may be used and that substantially the same minimum qualifications may be required and that the same schedule of compensation may be made to apply with equity.

(c) The board may also establish "broadband" classes for which the same general title may be used to designate each position allocated to the class and which may include more than one level or more than one specialty area within the same general field or work. In addition to the minimum qualifications for each broadband class, other job-related qualifications may be required for particular positions within the class. When the board establishes a broadband class, these levels and specialty areas shall be described in the class specification, and the board shall specify any instances in which these levels and speciality areas are to be treated as separate classes for purposes of applying other provisions of law.

SEC. 8. Section 18670 of the Government Code is amended to read:

18670. (a) The board may hold hearings and make investigations concerning all matters relating to the enforcement and effect of this part and rules prescribed hereunder. It may inspect any state institution, office, or other place of employment affected by this part to ascertain whether this part and the board rules are obeyed.

The board shall make investigations and hold hearings at the direction of the Governor or the Legislature or upon the petition of an employee or a citizen concerning the enforcement and effect of this part and to enforce the observance of Article VII of the Constitution and of this part and the rules made under this part.

(b) Effective January 1, 1996, this subdivision shall apply only to state employees in State Bargaining Unit 5. For purposes of subdivision (a), any discipline, as defined by Section 19576.1, is not subject to either a board investigation or hearing. Board review shall be limited to acceptance or rejection of discipline imposed pursuant to Section 19576.1.

(c) Effective June 1, 1998, this subdivision shall apply only to state employees in State Bargaining Unit 16. For the purposes of subdivision (a), any discipline, as defined by Section 19576.2, is not subject to either a board investigation or hearing.

SEC. 9. Section 18717 of the Government Code is amended to read:

18717. (a) The board shall develop objective criteria for determining the application of the state safety category of membership in the Public Employees' Retirement System to positions in the State Civil Service. Upon the request of the Department of Personnel Administration or an employee organization, the board shall then determine which classes of positions meet all or part of the elements of the criteria and shall list the positions in order based upon the degree in which their duties meet the criteria. An employee organization that requests a determination with respect to a class of position previously determined not to meet the criteria shall submit a written argument supporting the assertion that the class of position meets the criteria. The board, if it finds the written argument to be unpersuasive, may refuse to commence determination proceedings unless and until either the Department of Personnel Administration requests a determination with respect to that class of position or the employee organization submits to the board a supporting argument which the board finds persuasive. The board shall indicate to the department whether the classes qualify for state safety membership. The Public Employees' Retirement System and employing agencies shall assist and cooperate with the board in preparation of the report.

(b) The board shall transmit the report directly to the department, which shall make a copy available to the exclusive representative of any employee organization upon its written request.

(c) The department may use the results of the study in subsequent negotiations with the exclusive employee representatives; however, the report shall in no way obligate the department to take any action or make any recommendations as it relates to state safety membership.

(d) The department shall not recommend safety membership for any class of employees who have not been determined by the board to meet the established criteria.

(e) For classes of employees recommended for state safety membership by a memorandum of understanding reached pursuant to Section 3517.5, a copy of the report authorized under this section

shall be submitted to the Legislature with the signed memorandum of understanding.

(f) This section does not apply to state employees in State Bargaining Unit 16.

SEC. 10. Section 18903 of the Government Code is amended to read:

18903. (a) (1) For each class there shall be maintained a general reemployment list consisting of the names of all persons who have occupied positions with probationary or permanent status in the class and who have been legally laid off or demoted in lieu of layoff.

(2) Notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 5, 6, or 16. For each entry level class there shall be maintained a general reemployment list consisting of the names of all persons who have occupied positions with probationary or permanent status in the class and who have been legally laid off, demoted in lieu of layoff, or transferred in lieu of layoff.

(b) Within one year from the date of his or her resignation in good standing, or his or her voluntary demotion, the name of an employee who had probationary or permanent status may be placed on the general reemployment list with the consent of the appointing power and the board. The general reemployment list may also contain the names of persons placed thereon by the board in accordance with other provisions of this part.

SEC. 11. Section 19056.5 of the Government Code is amended to read:

19056.5. (a) Notwithstanding any other provision in this part and except as provided in subdivision (b), if the appointment is to be made from a general reemployment list, the names of the three persons with the highest standing on the list shall be certified to the appointing power.

(b) Notwithstanding subdivision (a), this subdivision shall apply to state employees in State Bargaining Unit 6 or 16. If the appointment is to be made from a general reemployment list, the name of the person with the highest standing on the list shall be certified to the appointing power.

SEC. 12. Section 19141 of the Government Code is amended to read:

19141. This section applies only to a permanent employee, or an employee who previously had permanent status and who, since that permanent status, has had no break in the continuity of his or her state service due to a permanent separation. As used in this section, "former position" is defined as in Section 18522, or, if the appointing power to which reinstatement is to be made and the employee agree, a vacant position in any department, commission, or state agency for which he or she is qualified at substantially the same level.

Within the periods of time specified below, an employee who vacates a civil service position to accept an appointment to an exempt

position shall be reinstated to his or her former position at the termination either by the employee or appointing power of the exempt appointment, provided he or she (a) accepted the appointment without a break in the continuity of state service, and (b) requests in writing reinstatement of the appointing power of his or her former position within 10 working days after the effective date of the termination.

The reinstatement may be requested by the employee only within the following periods of time:

(a) At any time after the effective date of the exempt appointment if the employee was appointed under one of the following:

(1) Subdivision (a), (b), (c), (d), (e), (f), (g), or (m) of Section 4 of Article VII of the California Constitution.

(2) Section 2.1 of Article IX of the California Constitution.

(3) Section 22 of Article XX of the California Constitution.

(4) To an exempt position under the same appointing power as the former position even though a shorter period of time may be otherwise specified for that appointment.

(b) Within six months after the effective date of the exempt appointment if appointed under subdivision (h), (i), (k), or (*l*) of Section 4 of Article VII of the California Constitution.

(c) (1) Within four years after the effective date of an exempt appointment if appointed under any other authority.

An employee who vacates his or her civil service position to accept an assignment as a member, inmate, or patient helper under subdivision (j) of Section 4 of Article VII of the California Constitution shall not have a right to reinstatement.

An employee who is serving under an exempt appointment retains a right of reinstatement when he or she accepts an extension of that exempt appointment or accepts a new exempt appointment, provided the extension or new appointment is made within the specified reinstatement time limit and there is no break in the continuity of state service. The period for which that right is retained is for the period applicable to the extended or new exempt appointment as if that appointment had been made on the date of the initial exempt appointment.

When an employee exercises his or her right of reinstatement and returns to his or her former position, the service while under an exempt appointment shall be deemed to be time served in the former position for the purpose of determining his or her seniority and eligibility for merit salary increases.

If the termination of an exempt appointment is for a reason contained in Section 19997 and the employee does not have a right to reinstatement, he or she shall have his or her name placed on the departmental and general reemployment lists for the class of his or her former position.

(2) Notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 5, 6, or 16. Within four years after the effective date of an exempt appointment if appointed under any other authority.

An employee who vacates his or her civil service position to accept an assignment as a member, inmate, or patient helper under subdivision (j) of Section 4 of Article VII of the California Constitution shall not have a right to reinstatement.

An employee who is serving under an exempt appointment retains a right of reinstatement when he or she accepts an extension of that exempt appointment or accepts a new exempt appointment, provided the extension or new appointment is made within the specified reinstatement time limit and there is no break in the continuity of state service. The period for which that right is retained is for the period applicable to the extended or new exempt appointment as if that appointment had been made on the date of the initial exempt appointment.

When an employee exercises his or her right of reinstatement and returns to his or her former position, the service while under an exempt appointment shall be deemed to be time served in the former position for the purpose of determining his or her eligibility for merit salary increases.

If the termination of an exempt appointment is for a reason contained in Section 19997 and the employee does not have a right to reinstatement, he or she shall have his or her name placed on the departmental and general reemployment lists for the class of his or her former position.

SEC. 13. Section 19142 of the Government Code is amended to read:

19142. (a) Every person accepts and holds a position in the state civil service subject to mandatory reinstatement of another person.

(b) (1) Upon reinstatement of a person any necessary separations are effected under the provisions of Section 19997.3 governing layoff and demotion except that (A) an employee who is not to be separated from state service need not receive advance notification as provided in Section 19997.13, and (B) seniority shall not be counted as provided in Section 19997.3 when this would result in the layoff of the person who has the reinstatement right. Under such a circumstance, qualifying service in classes at substantially the same or higher salary level is the only state service that shall be counted for purposes of determining who is to be separated.

(2) Notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 5, 6, or 16. Upon reinstatement of a person any necessary separations are effected under Section 19997.3 governing layoff and demotion except that an employee who is not to be separated from state service need not receive advance notification as provided in Section 19997.13.

SEC. 14. Section 19170.1 of the Government Code is amended to read:

19170.1. (a) Notwithstanding Section 19170 for state employees in State Bargaining Unit 6 or 16, the board shall establish for each class the length of the probationary period. The probationary period that shall be served upon appointment shall be not less than six months nor more than two years.

(b) The board may provide by rule: (1) for increasing the length of an individual probationary period by adding thereto periods of time during which an employee, while serving as a probationer, is absent from his or her position; or (2) for requiring an additional period not to exceed the length of the original probationary period when a probationary employee returns after an extended period of absence and the remainder of the probationary period is insufficient to evaluate his or her current performance.

SEC. 15. Section 19173.1 is added to the Government Code, to read:

19173.1. (a) Effective June 1, 1998, notwithstanding Section 19173, this section shall only apply to state employees in State Bargaining Unit 16.

(b) Any probationer may be rejected by the appointing power during the probationary period for reasons relating to the probationer's qualifications, the good of the service, or failure to demonstrate merit, efficiency, and fitness.

(c) A rejection during probationary period is effected by the service upon the probationer of a written notice of rejection that shall include: (1) an effective date for the rejection that shall not be later than the last day of the probationary period; and (2) a statement of the reasons for the rejection. Service of the notice shall be made prior to the effective date of the rejection. Notice of rejection shall be served prior to the conclusion of the prescribed probationary period. The probationary period may be extended when necessary to provide the full notice period required by board rule. Within 15 days after the effective date of the rejection, a copy thereof shall be filed with the board.

SEC. 16. Section 19175.3 is added to the Government Code, to read:

19175.3. (a) Notwithstanding Section 19175, this section shall only apply to state employees in State Bargaining Unit 16.

(b) The board at the written request of a rejected probationer, filed within 15 calendar days of the effective date of rejection, shall only review allegations that the rejection was made for reasons of discrimination as defined for the purposes of subdivision (a) of Section 19702, fraud, or political patronage. If the board determines that the rejected probationer has stated a prima face case of discrimination, fraud, or political patronage, the board may investigate the case with or without a hearing and do any one of the following:

(1) Affirm the action of the appointing power.
(2) Modify the action of the appointing power.
(3) Restore the name of the rejected probationer to the employment list for certification to any position within the class, provided that his or her name shall not be certified to the agency by which he or she was rejected, except with the concurrence of the appointing power thereof.
(4) Restore the rejected probationer to the position from which he or she was rejected, but this shall be done only if the board determines that there is substantial evidence to support that the rejection was made for reasons of discrimination as defined for the purposes of subdivision (a) of Section 19702, fraud, or political patronage. At any such investigation or hearing the rejected probationer shall have the burden of proof; subject to rebuttal by him or her, it shall be presumed that the rejection was free from discrimination, fraud, and political patronage, and that the statement of reasons therefor in the notice of rejection is true.

SEC. 17. Section 19570.1 is added to the Government Code, to read:

19570.1. Notwithstanding Section 19570, this section shall only apply to state employees in State Bargaining Unit 16. As used in this article, "disciplinary action" means dismissal, demotion, suspension, or other disciplinary action. "Disciplinary action" does not include a written or oral reprimand taken against an employee. Reprimands may be considered for the purpose of progressive discipline. This article shall not apply to any disciplinary action affecting managerial employees subject to Article 2 (commencing with Section 19590), except as provided in Sections 19590.5, 19592, and 19592.2.

SEC. 18. Section 19572.1 is added to the Government Code, to read:

19572.1. (a) Notwithstanding Section 19572, this section shall only apply to state employees in State Bargaining Unit 16.

(b) Disciplinary actions pursuant to Section 19576.2 shall be for just cause or one or more of the following causes for discipline:
(1) Fraud in securing appointment.
(2) Incompetency.
(3) Inefficiency.
(4) Inexcusable neglect of duty.
(5) Insubordination.
(6) Dishonesty.
(7) Drunkenness on duty.
(8) Intemperance.
(9) Addiction to the use of controlled substances.
(10) Inexcusable absence without leave.
(11) Conviction of a felony or conviction of a misdemeanor involving moral turpitude. A plea or verdict of guilty, or a conviction following a plea of nolo contendere, to a charge of a felony of any

offense involving moral turpitude is deemed to be a conviction within the meaning of this section.

(12) Immorality.

(13) Discourteous treatment of the public or other employees.

(14) Improper political activity.

(15) Willful disobedience.

(16) Misuse of state property.

(17) Violation of this part or board rule.

(18) Violation of the prohibitions set forth in accordance with Section 19990.

(19) Refusal to take and subscribe any oath or affirmation that is required by law in connection with the employment.

(20) Other failure of good behavior either during or outside of duty hours that is of such a nature that it causes discredit to the appointing authority of the person's employment.

(21) Any negligence, recklessness, or intentional act that results in the death of a patient of a state hospital serving the mentally disabled or the developmentally disabled.

(22) The use during duty hours, for training or target practice, of any material that is not authorized therefor by the appointing power.

(23) Unlawful discrimination, including harassment, on the basis of race, religious creed, color, national origin, ancestry, disability, marital status, sex, or age, against the public or other employees while acting in the capacity of a state employee.

(24) Unlawful retaliation against any other state officer or employee or member of the public who in good faith reports, discloses, divulges, or otherwise brings to the attention of, the Attorney General, or any other appropriate authority, any facts or information relative to actual or suspected violation of any law of this state or the United States occurring on the job or directly related thereto.

(c) If provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if those provisions of a memorandum of understanding require the expenditure of funds, the provision shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 19. Section 19574 of the Government Code is amended to read:

19574. (a) The appointing power, or its authorized representative, may take adverse action against an employee for one or more of the causes for discipline specified in this article. Adverse action is valid only if a written notice is served on the employee prior to the effective date of the action, as defined by board rule. The notice shall be served upon the employee either personally or by mail and shall include: (1) a statement of the nature of the adverse action; (2) the effective date of the action; (3) a statement of the reasons

therefor in ordinary language; (4) a statement advising the employee of the right to answer the notice orally or in writing; and (5) a statement advising the employee of the time within which an appeal must be filed. The notice shall be filed with the board not later than 15 calendar days after the effective date of the adverse action.

(b) Effective January 1, 1996, this subdivision shall apply only to state employees in State Bargaining Unit 5. This section shall not apply to discipline as defined by Section 19576.1.

(c) Effective June 1, 1998, this subdivision shall apply only to state employees in State Bargaining Unit 16. This section shall not apply to minor discipline as defined by Section 19576.2.

SEC. 20. Section 19576.2 is added to the Government Code, to read:

19576.2. Notwithstanding Section 19576, this section shall apply only to state employees in State Bargaining Unit 16.

(a) Minor discipline is a suspension without pay for five days or less or up to a 5-percent reduction in pay for five months or less. Whenever an answer is filed by an employee who is subject to minor discipline, and the memorandum of understanding for state employees in State Bargaining Unit 16 has expired, the State Personnel Board shall follow the minor discipline appeal procedures contained in Article 12A, Sections 1 to 16, inclusive, of the expired memorandum of understanding for state employees in State Bargaining Unit 16 until a successor agreement is negotiated between Department of Personnel Administration and the exclusive representative. However, if an employee receives one of the cited actions in more than three instances in any 12-month period, he or she shall, upon each additional action within the same 12-month period, be afforded a hearing before the State Personnel Board if he or she files an answer to the action.

(b) The State Personnel Board shall not have the authority as stated in subdivision (a) with regard to written or oral reprimands. Reprimands shall not be grievable or appealable by the receiving employee by any means. Rejections on probation shall not be grievable or appealable by the receiving employee by any means except as provided in Section 19175.1.

(c) The appointing power shall not impose any discipline in a manner that is inconsistent with "salary basis test" against an employee employed in an executive, administrative, or professional capacity and whose duties exempt him or her from the wage and hour provisions of the federal Fair Labor Standards Act as set forth pursuant to Section 13(a)(1) of the Fair Labor Standards Act of 1938, as amended, (Title 29, Section 213(a)(1), United States Code) and in Part 54 of Title 29 of the Code of Federal Regulations, as defined and delimited on the effective date of this section, and as those provisions may be amended in the future by the Administrator of the Wage and Hour Division of the United States Department of Labor.

(d) Disciplinary action taken pursuant to this section shall not be subject to the following provisions: 19180, 19574.1, 19574.2, 19575, 19575.5, 19579, 19580, 19581, 19581.5, 19582, 19583, and 19587, and State Personnel Board Rules 51.1 to 51.9, inclusive, 52, and 52.1 to 52.5, inclusive.

(e) Notwithstanding any other law or rule, if the provisions of this section are in conflict with the provisions of the memorandum of understanding reached pursuant to Section 3517.5, 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.

(f) If the State Personnel Board establishes regulations to implement this section, the regulations shall be consistent with the expired memorandum of understanding for state employees in State Bargaining Unit 16 and the Ralph C. Dills Act (Part 10.3 (commencing with Section 3512) of Division 4 of Title 1).

SEC. 21. Section 19582 of the Government Code is amended to read:

19582. (a) Hearings may be held by the board, or by any authorized representative, but the board shall render the decision that in its judgment is just and proper.

During a hearing, after the appointing authority has completed the opening statement or the presentation of evidence, the employee, without waiving his or her right to offer evidence in the event the motion is not granted, may move for a dismissal of the charges.

If it appears that the evidence presented supports the granting of the motion as to some but not all of the issues involved in the action, the board or the authorized representative shall grant the motion as to those issues and the action shall proceed as to the issues remaining. Despite the granting of the motion, no judgment shall be entered prior to a final determination of the action on the remaining issues, and shall be subject to final review and approval by the board.

(b) If a contested case is heard by an authorized representative, he or she shall prepare a proposed decision in a form that may be adopted as the decision in the case. A copy of the proposed decision shall be filed by the board as a public record and furnished to each party within 10 days after the proposed decision is filed with the board. The board itself may adopt the proposed decision in its entirety, may remand the proposed decision, or may reduce the adverse action set forth therein and adopt the balance of the proposed decision.

(c) If the proposed decision is not remanded or adopted as provided in subdivision (b), each party shall be notified of the action, and the board itself may decide the case upon the record, including the transcript, with or without taking any additional evidence, or may refer the case to the same or another authorized representative to

take additional evidence. If the case is so assigned to an authorized representative, he or she shall prepare a proposed decision as provided in subdivision (b) upon the additional evidence and the transcript and other papers that are part of the record of the prior hearing. A copy of the proposed decision shall be furnished to each party. The board itself shall decide no case provided for in this subdivision without affording the parties the opportunity to present oral and written argument before the board itself. If additional oral evidence is introduced before the board itself, no board member may vote unless he or she heard the additional oral evidence.

(d) In arriving at a decision or a proposed decision, the board or its authorized representative may consider any prior suspension or suspensions of the appellant by authority of any appointing power, or any prior proceedings under this article.

(e) The decision shall be in writing and contain findings of fact and the adverse action, if any. The findings may be stated in the language of the pleadings or by reference thereto. Copies of the decision shall be served on the parties personally or by mail.

(f) This section shall not apply to minor discipline, as defined in a memorandum of understanding or by Section 19576.2, for state employees in State Bargaining Unit 16.

SEC. 22. Section 19582.1 is added to the Government Code, to read:

19582.1. Notwithstanding Section 19582, this section shall apply only to state employees in State Bargaining Unit 16.

(a) The board's review of decisions of minor discipline, as defined by a memorandum of understanding or by Section 19576.2, shall be limited to either adopting the penalty of the proposed decision or revoking the disciplinary action in its entirety.

(b) The board's review of decisions of discipline, including minor discipline, shall not impose any discipline against an employee that would jeopardize the employee's status under the federal Fair Labor Standards Act, as set forth pursuant to Section 13(a)(1) of The Fair Labor Standards Act of 1938, as amended (Title 29, Section 213(a)(1), United States Code) and in Part 54 of Title 29 of the Code of Federal Regulations, as defined and delimited on the effective date of this section and as those provisions maybe amended in the future.

(c) If provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provision shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 23. Section 19582.6 is added to the Government Code, to read:

19582.6. (a) Effective June 1, 1998, notwithstanding Section 19582.5, this section shall apply only to state employees in State Bargaining Unit 16.

(b) The board may designate certain of its decisions as precedents. Precedential decisions shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3. The board may provide by rule for the reconsideration of a previously issued decision to determine whether or not it shall be designated as a precedent decision. All decisions designated as precedents shall be published in a manner determined by the board.

(c) For the purpose of this section, a decision reached pursuant to Section 19576.2 is not subject to board precedential decision, and the board may not adopt that decision as a precedential decision.

SEC. 24. Section 19608 is added to the Government Code, to read:

19608. Any demonstration project implemented under this chapter shall not include the adoption or waiver of regulations or statutes that are administered or enforced by the Department of Personnel Administration without the express approval of the Department of Personnel Administration.

SEC. 25. Section 19702 of the Government Code is amended to read:

19702. (a) A person shall not be discriminated against under this part because of sex, race, religious creed, color, national origin, ancestry, marital status, physical disability, or mental disability. A person shall not be retaliated against because he or she has opposed any practice made an unlawful employment practice, or made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. For purposes of this article, "discrimination" includes harassment. This subdivision is declaratory of existing law.

(b) As used in this section, "physical disability" includes, but is not limited to, impairment of sight, hearing, or speech, or impairment of physical ability because of amputation or loss of function or coordination, or any other health impairment that requires special education or related services.

(c) As used in this section, "mental disability" includes, but is not limited to, any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(d) Notwithstanding subdivisions (b) and (c), if the definition of disability used in the Americans with Disabilities Act of 1990 (Public Law 101-336) would result in broader protection of the civil rights of individuals with a mental disability or physical disability, as defined in subdivision (b) or (c), then that broader protection shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of, the definitions in subdivisions (b) and (c). The definitions of subdivisions (b) and (c) shall not be deemed to refer to or include conditions excluded from the federal definition of

"disability" pursuant to Section 511 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12211).

(e) If the board finds that a person has engaged in discrimination under this part, and it appears that this practice consisted of acts described in Section 243.4, 261, 262, 286, 288, 288a, or 289 of the Penal Code, the board, with the consent of the complainant, shall provide the local district attorney's office with a copy of its decision and order.

(f) (1) If the board finds that discrimination has occurred in violation of this part, the board shall issue and cause to be served on the appointing authority an order requiring the appointing authority to cause the discrimination to cease and desist and to take any action, including, but not limited to, hiring, reinstatement, or upgrading of employees, with or without backpay, and compensatory damages, which, in the judgment of the board, will effectuate the purposes of this part. Consistent with this authority, the board may establish rules governing the award of compensatory damages. The order shall include a requirement of reporting the manner of compliance.

(2) Notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 6 or 16. If the board finds that discrimination has occurred in violation of this part, the board shall issue and cause to be served on the appointing authority an order requiring the appointing authority to cause the discrimination to cease and desist and to take any action, including, but not limited to, hiring, reinstatement, or upgrading of employees, with or without backpay, adding additional seniority, and compensatory damages, which, in the judgment of the board, will effectuate the purposes of this part. Consistent with this authority, the board may establish rules governing the award of compensatory damages. The order shall include a requirement of reporting the manner of compliance.

(g) Any person claiming discrimination within the state civil service may submit a complaint that shall be in writing and set forth the particulars of the alleged discrimination, the name of the appointing authority, the persons alleged to have committed the unlawful discrimination, and any other information that may be required by the board. The complaint shall be filed with the appointing authority or, in accordance with board rules, with the board itself.

(h) (1) Complaints shall be filed within one year of the alleged unlawful discrimination or the refusal to act in accordance with this section, except that this period may be extended for not to exceed 90 days following the expiration of that year, if a person allegedly aggrieved by unlawful discrimination first obtained knowledge of the facts of the alleged unlawful discrimination after the expiration of one year from the date of its occurrence. Complaints of discrimination in adverse actions or rejections on probation shall be filed in accordance with Sections 19175 and 19575.

(2) Effective June 1, 1998, notwithstanding paragraph (1), this paragraph shall only apply to state employees in State Bargaining

Unit 16. Complaints shall be filed within one year of the alleged unlawful discrimination or the refusal to act in accordance with this section, except that this period may be extended for not to exceed 90 days following the expiration of that year, if a person allegedly aggrieved by unlawful discrimination first obtained knowledge of the facts of the alleged unlawful discrimination after the expiration of one year from the date of its occurrence. Complaints of discrimination in disciplinary actions defined in Section 19576.2 shall be filed in accordance with that section. Complaints of discrimination in all other disciplinary actions shall be filed in accordance with Section 19575. Complaints of discrimination in rejections on probation shall be filed in accordance with Section 19175.3.

(i) (1) When an employee of the appointing authority refuses, or threatens to refuse, to cooperate in the investigation of a complaint of discrimination, the appointing authority may seek assistance from the board. The board may provide for direct investigation or hearing of the complaint, the use of subpoenas, or any other action which will effect the purposes of this section.

(2) This subdivision shall not apply to complaints of discrimination filed in accordance with Section 19576.2.

SEC. 26. Section 19786 of the Government Code is amended to read:

19786. (a) When a civil service employee has been reinstated after military service in accordance with Section 19780, and any question arises relative to his or her ability or inability for any reason arising out of the military service to perform the duties of the position to which he or she has been reinstated, the board shall, upon the request of the appointing power or of the employee, hear the matter and may on its own motion or at the request of either party take any and all necessary testimony of every nature necessary to a decision on the question.

(b) If the board finds that the employee is not able for any reason arising out of the military service to carry out the usual duties of the position he or she then holds, it shall order the employee placed in a position in which the board finds he or she is capable of performing the duties in the same class or a comparable class in the same or any other state department, bureau, board, commission, or office under this part and the rules of the board covering transfer of an employee from a position under the jurisdiction of one appointing power to a position under the jurisdiction of another appointing power, without the consent of the appointing powers, where a vacancy may be made available to him or her under this part and the rules of the board, but in no event shall the transfer constitute a promotion within the meaning of this part and the rules of the board.

(c) (1) If a layoff is made necessary to place a civil service employee in a position in the same class or a comparable class in accordance with this section, the layoff shall be made under Section 19997.3, provided that no civil service employee who was employed

prior to September 16, 1940, shall be laid off as a result of the placing of an employee in the same class or a comparable class under this section.

(2) Notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 5, 6, or 16. If a layoff is made necessary to place a civil service employee in a position in the same class or a comparable class in accordance with this section, the layoff shall be made under Section 19997.3.

(d) The board may order the civil service employee reinstated to the department, bureau, board, commission, or office from which he or she was transferred either upon request of the employee or the appointing power from which transferred. The reinstatement may be made after a hearing as provided in this section if the board finds that the employee is at the time of the hearing able to perform the duties of the position.

SEC. 27. Section 19798 of the Government Code is amended to read:

19798. In establishing order and subdivisions of layoff and reemployment, the board, when it finds past discriminatory hiring practices, shall by rule, adopt a process that provides that the composition of the affected work force will be the same after the completion of a layoff, as it was before the layoff procedure was implemented. This section does not apply to state employees in State Bargaining Unit 5, 6, or 16.

SEC. 28. Section 19815.41 of the Government Code is amended to read:

19815.41. (a) Notwithstanding subdivision (e) of Section 19815.4, this section shall apply to state employees in State Bargaining Unit 5, 6, or 16.

(b) The director shall hold nonmerit statutory appeal hearings, subpoena witnesses, administer oaths, and conduct investigations in accordance with Department of Personnel Administration Rule 599.859 (b)(2).

(c) The director may, at his or her discretion, hold hearings, subpoena witnesses, administer oaths, or conduct investigations or appeals concerning other matters relating to the department's jurisdiction.

(d) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 29. Section 19816.2 of the Government Code is amended to read:

19816.2. Notwithstanding any other provision of this part, regulations and other provisions pertaining to the layoff or demotion

in lieu of layoff of civil service employees that are established or agreed to by the department shall be subject to review by the State Personnel Board for consistency with merit employment principles as provided for by Article VII of the California Constitution. This section does not apply to state employees in State Bargaining Unit 5, 6, or 16.

SEC. 30. Section 19816.20 is added to the Government Code, to read:

19816.20. Notwithstanding Section 18717, this section shall apply to state employees in State Bargaining Unit 16.

(a) The department shall determine which classes or positions meet the elements of the criteria for the state safety category of membership in the Public Employees' Retirement System. An employee organization or employing agency requesting a determination from the department shall provide the department with information and written argument supporting the request.

(b) The department may use the determination findings in subsequent negotiations with the exclusive representatives.

(c) The department shall not approve safety membership for any class or position that has not been determined to meet all of the following criteria:

(1) In addition to the defined scope of duties assigned to the class or position, the member's ongoing responsibility includes:

(A) The protection and safeguarding of the public and of property.

(B) The control or supervision of, or a regular, substantial contact with one of the following:

(i) Inmates or youthful offenders in adult or youth correctional facilities.

(ii) Patients in state mental facilities that house Penal Code offenders.

(iii) Clients charged with a felony who are in a locked and controlled treatment facility of a developmental center.

(2) The conditions of employment require that the member be capable of responding to emergency situations and provide a level of service to the public such that the safety of the public and of property is not jeopardized.

(d) For classes or positions that are found to meet this criteria, the department may agree to provide safety membership by a memorandum of understanding reached pursuant to Section 3517.5 if the affected employees are subject to collective bargaining. The department shall notify the retirement system of its determination, as prescribed in Section 20405.1.

(e) The department shall provide the Legislature an annual report that lists the classes or positions which were found to be eligible for safety membership under this section.

SEC. 31. Section 19817 of the Government Code is amended to read:

19817. This article applies only with respect to regulations that apply to state employees in State Bargaining Unit 5, 6, or 16.

SEC. 32. Section 19818.7 of the Government Code is amended to read:

19818.7. (a) Notwithstanding Section 19818.6, this section shall apply to state employees in State Bargaining Unit 6 or 16.

(b) The department shall administer the Personnel Classification Plan of the State of California including the allocation of every position to the appropriate class in the classification plan. The allocation of a position to a class shall derive from and be determined by the ascertainment of the duties and responsibilities of the position and shall be based on the principle that all positions that meet the definition of a class pursuant to Section 18523.1 shall be included in the same class.

(c) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of the memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(d) A broadband project may not change the terms and conditions of employment covered by a memorandum of understanding entered into pursuant to the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1), unless there is a written agreement with respect to the project between the department and the recognized employee organization representing the affected employees.

SEC. 33. Section 19818.11 of the Government Code is amended to read:

19818.11. (a) This section shall apply to state employees in State Bargaining Unit 6 or 16.

The department may, directly or through agreement or contract with one or more agencies, conduct demonstration classification, compensation, and related projects. "Demonstration project", for the purposes of this section, means a project that uses alternative classification, compensation, and other personnel management policies and procedures to determine if a change would result in cost savings, improved efficiency, or both cost savings and improved efficiency in the existing personnel management system.

(b) Nothing in this section shall infringe upon or conflict with the merit principles as embodied in Article VII of the California Constitution.

(c) The establishment of a demonstration project shall not be limited by the lack of specific authority in this division or by the existence of any statute or regulation that is inconsistent with actions to be taken in the demonstration project.

(d) Prior to implementation of a demonstration project, the department shall adopt regulations specifying the impact of the project on employee status, compensation, benefits, and rights with regard to transfer, layoff, promotion, and demotion. These regulations are not subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3), and shall automatically expire after five years from the date of adoption or at the end of the demonstration project, whichever is earlier. Nothing in this section shall affect the rights of employees included within demonstration projects, except those rights directly pertaining to the subject matter of the demonstration project.

(e) The department shall notify each house of the Legislature when a demonstration project is undertaken. The department shall also evaluate each project at its conclusion and notwithstanding Section 7550.5, shall prepare and submit a summary of the evaluation to each house of the Legislature that includes a discussion of the following:

(1) The purpose of the demonstration project that specifically states the goals or objectives of the project.

(2) The cost projections and methods by which savings, if any, may be calculated.

(3) A definitive mechanism by which the value and success, if any, of the demonstration project may be quantified as feasible. This mechanism shall include specific numerical objectives that must be met or exceeded if a demonstration project is to be judged successful.

(f) A demonstration project may not change the terms and conditions of employment covered by a memorandum of understanding entered into pursuant to the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1), unless there is a written agreement with respect to the project between the department and the recognized employee organization representing the affected employees.

(g) Any demonstration project implemented under this section shall not include the adoption or waiver of regulations or statutes that are administered or enforced by the State Personnel Board without the express approval of the State Personnel Board.

SEC. 34. Section 19826.1 is added to the Government Code, to read:

19826.1. Notwithstanding Section 19826, effective June 1, 1998, this section shall apply only to state employees in State Bargaining Unit 16.

(a) The department shall establish and adjust salary ranges or rates for each class of position in the state civil service subject to any merit limits contained in Article VII of the California Constitution. The salary range or rate shall be based on the principle that like

salaries shall be paid for comparable duties and responsibilities. In establishing or changing these ranges or rates, consideration shall be given to the prevailing rates for comparable service in other public employment and in private business. The department shall make no adjustments that require expenditures in excess of existing appropriations that may be used for salary increase purposes. The department may make a change in salary range or rate retroactive to the date of application for the change.

(b) Notwithstanding any other provision of law, the department shall not establish, adjust, or recommend a salary range or rate for any employees in an appropriate unit where an employee organization has been chosen as the exclusive representative pursuant to Section 3520.5.

(c) Notwithstanding Section 7550.5, on or before January 10 of each year, the department shall prepare and submit to the parties meeting and conferring pursuant to Section 3517 and to the Legislature, a report containing the department's findings relating to the salaries of employees in comparable occupations in private industry and other governmental agencies.

(d) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 35. Section 19828 of the Government Code is amended to read:

19828. (a) Reasonable opportunity to be heard shall be provided by the department to any employee affected by a change in the salary range for the class of his or her position.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, 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.

(c) Effective October 1, 1995, this section shall not apply to state employees in State Bargaining Unit 5.

(d) Effective June 1, 1998, this section shall not apply to state employees in State Bargaining Unit 16.

SEC. 36. Section 19829 of the Government Code is amended to read:

19829. (a) (1) Salary ranges shall consist of minimum and maximum salary limits. The department shall provide for intermediate steps within these limits to govern the extent of the salary adjustment that an employee may receive at any one time;

provided, that in classes and positions with unusual conditions or hours of work or where necessary to meet the provisions of state law recognizing differential statutory qualifications within a profession or prevailing rates and practices for comparable services in other public employment and in private business, the department may establish more than one salary range or rate or method of compensation within a class.

(2) Effective October 1, 1995, notwithstanding paragraph (1), this paragraph shall apply only to state employees in State Bargaining Unit 5. Salary ranges shall consist of minimum and maximum salary limits. Except where otherwise provided by law, the appointing power or designee may authorize payment at any salary rate within these limits to govern the extent of a salary adjustment that an employee may receive for situations including, but not limited to, recruitment and retention, extraordinary qualifications, and successful job performance or promotion. Only those employees who are performing successfully as determined by the appointing power or designee shall receive periodic salary increases until the maximum of the salary range is reached to recognize continuous successful performance or value to the organization. Adjustments within the salary range authorized in this paragraph may be either temporary or permanent. The department may establish more than one salary range or rate or method of compensation within a class.

(3) Effective June 1, 1998, notwithstanding paragraph (1), this paragraph shall apply only to state employees in State Bargaining Unit 16. Salary ranges shall consist of minimum and maximum salary limits. Except where otherwise provided by law, the appointing power or designee, consistent with the regulations of the department, shall determine the employee's salary rate upon appointment and may authorize subsequent increases in these rates based on considerations including, but not limited to, recruitment and retention, extraordinary qualifications, and successful job performance or promotion. Only those employees who are performing successfully as determined by the appointing power or designee shall receive periodic performance salary adjustments until the maximum of the salary range is reached to recognize continuous successful performance or value to the organization. Adjustments within the salary range authorized in this section may be either temporary or permanent. The department may establish more than one salary range or rate or method of compensation within a class.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 37. Section 19832 of the Government Code is amended to read:

19832. (a) (1) After completion of the first year in a position, each employee shall receive a merit salary adjustment equivalent to one of the intermediate steps during each year when he or she meets the standards of efficiency as the department by rule shall prescribe.

(2) Effective October 1, 1995, notwithstanding paragraph (1), this paragraph shall apply only to state employees in State Bargaining Unit 5. Employees whose salary is not at the maximum of the salary range shall receive a salary review and be considered for a salary adjustment at least annually. Only those employees who are performing successfully, as determined by the appointing power, shall receive salary increases until the maximum of the salary range is reached to recognize continuous successful performance. The employee's salary rate may not exceed the maximum of the salary range or fall below the minimum of the salary range except where otherwise provided by law or department rules.

(3) Effective June 1, 1998, notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 16. Employees whose salary is not at the maximum of the salary range shall be considered for a performance salary adjustment at least annually. Only those employees who are performing successfully as determined by the appointing power shall receive performance salary adjustments until the maximum of the salary range is reached to recognize continuous successful performance. The employee's salary rate may not exceed the maximum of the salary range or fall below the minimum of the salary range except where otherwise provided by law or department rules.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 38. Section 19834 of the Government Code is amended to read:

19834. (a) Automatic salary adjustments shall be made for employees in the state civil service in accordance with this chapter and department rule adopted pursuant hereto, notwithstanding the power now or hereafter conferred on any officer to fix or approve the fixing of salaries, unless there is not sufficient money available for the purpose in the appropriation from which the salary shall be paid and the director shall so certify.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, 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.

(c) Effective October 1, 1995, this section shall not apply to state employees in State Bargaining Unit 5.

(d) Effective June 1, 1998, this section shall not apply to state employees in State Bargaining Unit 16.

SEC. 39. Section 19835 of the Government Code is amended to read:

19835. (a) The right of an employee to automatic salary adjustments is cumulative for a period not to exceed two years and he or she shall not, in the event of an insufficiency of appropriation, lose his or her right to these adjustments for the intermediate steps to which he or she may be entitled for this period.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, 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.

(c) Effective October 1, 1995, this section shall not apply to state employees in State Bargaining Unit 5.

(d) Effective June 1, 1998, this section shall not apply to state employees in State Bargaining Unit 16.

SEC. 40. Section 19836.1 is added to the Government Code, to read:

19836.1. Effective June 1, 1998, notwithstanding Section 19836, this section shall apply only to state employees in State Bargaining Unit 16.

(a) The appointing power or designee with the approval of the department may authorize payment at any step above the minimum salary limit to classes or positions in order to correct salary inequities.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 41. Section 19841 of the Government Code is amended to read:

19841. (a) Notwithstanding Section 11030, whenever a state officer or employee is required by the appointing power because of a change in assignment, promotion, or other reason related to his or her duties to change his or her place of residence, the officer, agent, or employee shall receive his or her actual and necessary moving, traveling, lodging, and meal expenses incurred by him or her both

before and after and by reason of the change of residence. The maximum allowances for these expenses shall be as follows: the costs of packing, transporting, and unpacking 11,000 pounds of household effects, traveling, lodging, and meal expenses for 60 days while locating a permanent residence, storage of household effects for 60 days, and additional miscellaneous allowances not in excess of two hundred dollars ($200). The maximum allowances may be exceeded where the director determines that the change of residence will result in unusual and unavoidable hardship for the officer or employee, and in those cases the director shall determine the maximum allowances to be received by the officer or employee.

(b) If a change of residence reasonably requires the sale of a residence or the settlement of an unexpired lease, the officer or employee may be reimbursed for any of the following expenses:

(1) The settlement of the unexpired lease to a maximum of one year. Upon the date of surrender of the premises by the employee who is the lessee, the rights and obligations of the parties to the lease shall be as determined by Section 1951.2 of the Civil Code.

The state shall be absolved of responsibility for an unexpired lease if the department determines the employee knew or reasonably should have known that a transfer involving a physical move was imminent before entering into the lease agreement.

(2) In the event of residence sale, reimbursement for brokerage and other related selling fees or charges, as determined by regulations of the department, customarily charged for like services in the locality where the residence is located.

(c) This subdivision shall apply to state employees in State Bargaining Unit 5, 6, or 16. If the change of residence is caused by a layoff, the application of this section shall be at the discretion of the department based upon the recommendation of the appointing power.

(d) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 42. Section 19853.1 of the Government Code is amended to read:

19853.1. (a) Notwithstanding Section 19853, this section shall apply to state employees in State Bargaining Unit 5 or 16.

(b) Except as provided in subdivision (c), all employees shall be entitled to the following holidays: January 1, the third Monday in January, the third Monday in February, the last Monday in May, July 4, the first Monday in September, November 11, the day after Thanksgiving, December 25, and every day appointed by the Governor of this state for a public fast, Thanksgiving, or holiday.

When a day herein listed falls on a Sunday, the following Monday shall be deemed to be the holiday in lieu of the day observed. If November 11 falls upon a Saturday, the preceding Friday shall be deemed to be the holiday in lieu of the day observed. Any employee who may be required to work on any of the holidays mentioned in this section and who does work on any of these holidays shall be entitled to be paid compensation or given compensating time off for that work in accordance with his or her classification's assigned workweek group.

(c) If the provisions of subdivision (b) are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, 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.

(d) Any employee who either is excluded from the definition of state employee in subdivision (c) of Section 3513, or is a nonelected officer or employee of the executive branch of government who is not a member of the civil service, is entitled to the following holidays, with pay, in addition to any official state holiday appointed by the Governor:

(1) January 1, the third Monday in January, the third Monday in February, the last Monday in May, July 4, the first Monday in September, November 11, Thanksgiving Day, the day after Thanksgiving, December 25.

(2) When November 11 falls on a Saturday, employees shall be entitled to the preceding Friday as a holiday with pay.

(3) When a holiday, other than a personal holiday, falls on a Saturday, an employee shall, regardless of whether he or she works on the holiday, accrue only an additional eight hours of personal holiday credit per fiscal year for the holiday. The holiday credit shall be accrued on the actual date of the holiday and shall be used within the same fiscal year.

(4) When a holiday other than a personal holiday falls on Sunday, employees shall be entitled to the following Monday as a holiday with pay.

(5) Employees who are required to work on a holiday shall be entitled to pay or compensating time off for this work in accordance with their classifications' assigned workweek group.

(6) Persons employed on less than a full-time basis shall receive holidays in accordance with the Department of Personnel Administration rules.

(e) Any employee, as defined in subdivision (c) of Section 3513, may elect to use eight hours of vacation, annual leave, or compensating time off consistent with departmental operational needs and collective bargaining agreements for March 31, known as "Cesar Chavez Day."

(f) This section shall become effective only when the Department of Personnel Administration notifies the Legislature that the language contained in this section has been agreed to by all the parties, and the necessary statutes are amended to reflect this change for employees excluded from the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512), Division 4, Title 1).

SEC. 43. Section 19854 of the Government Code is amended to read:

19854. (a) Every employee, upon completion of six months of his or her initial probationary period in state service, shall be entitled to one personal holiday per fiscal year. The personal holiday shall be credited to each full-time employee on the first day of July. No employee shall lose a personal holiday credit because of the change from calendar to fiscal year crediting. The department head or designee may require the employee to provide five working days' advance notice before a personal holiday is taken, and may deny use subject to operational needs. The department may provide by rule for the granting of this holiday for employees.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, 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.

(c) This section does not apply to state employees in State Bargaining Unit 5 or 16.

(d) Subdivision (c) shall become effective only when the Department of Personnel Administration notifies the Legislature that the language contained in that subdivision has been agreed to by all the parties, and the necessary statutes are amended to reflect this change for employees excluded from the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512), Division 4, Title 1).

SEC. 44. Section 19994 of the Government Code is amended to read:

19994. (a) (1) When the state takes over and there is transferred to it a function from any other public agency, the department may determine the extent, if any, to which the employees employed by the other public agency on the date of transfer are entitled to have credited to them in the state civil service, seniority credits, accumulated sick leave, and accumulated vacation because of service with the former agency. Granting of seniority credit under this section is subject to review by the State Personnel Board pursuant to Section 19816.2.

(2) Notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 5, 6, or 16. When the state takes over and there is transferred to it a function from any other public agency, the department may determine the extent, if any, to

which the employees employed by the other public agency on the date of transfer are entitled to have credited to them in the state civil service, seniority credits, accumulated sick leave, and accumulated vacation because of service with the former agency.

(b) The department shall limit that determination to the time any transferred employees were employed in the specific function or a function substantially similar while in the former agency and the seniority credits and accumulated sick leave and accumulated vacation shall not exceed that to which each employee would be entitled if he or she had been continuously employed by the State of California. This section is applicable to any function heretofore transferred to the state, whether by state action or otherwise, as well as to any future transfers of a function to the state, whether by state action or otherwise.

SEC. 45. Section 19994.1 of the Government Code is amended to read:

19994.1. (a) An appointing power may transfer any employee under his or her jurisdiction: (1) to another position in the same class; or (2) from one location to another whether in the same position, or in a different position as specified above in (1) or in Section 19050.5.

(b) (1) When a transfer under this section or Section 19050.5 reasonably requires an employee to change his or her place of residence, the appointing power shall give the employee, unless the employee waives this right, a written notice of transfer 60 days in advance of the effective date of the transfer. Unless the employee waives this right, the appointing power shall provide to the employee 60 days prior to the effective date of the transfer a written notice setting forth in clear and concise language the reasons why the employee is being transferred.

(2) Notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 5, 6, or 16. When a transfer under this section or Section 19050.5 reasonably requires an employee to change his or her place of residence, the appointing power shall give the employee, unless the employee waives this right, a written notice of transfer 60 days in advance of the effective date of the transfer unless the transfer is in lieu of layoff, in which case the notice shall be 30 days in advance of the effective date of the transfer. Unless the employee waives this right, the written notice shall set forth in clear and concise language the reasons why the employee is being transferred.

(c) If this section is in conflict with a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the memorandum of understanding requires the expenditure of funds, it shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 46. Section 19994.2 of the Government Code is amended to read:

19994.2. (a) (1) When there are two or more employees in a class and an involuntary transfer is required to a position in the same class, or an appropriate class as designated by the State Personnel Board, in a location that reasonably requires an employee to change his or her place of residence, the department may determine the methods by which employees in the class or classes involved are to be selected for transfer. These methods may include seniority and other considerations.

(2) Notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 5, 6, or 16. When there are two or more employees in a class and an involuntary transfer is required to a position in the same class, or an appropriate class as designated by the State Personnel Board, in a location that reasonably requires an employee to change his or her place of residence, the department may determine the methods by which employees in the class or classes involved are to be selected for transfer. These methods may include seniority and other considerations, including special skills.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 47. Section 19997 of the Government Code is amended to read:

19997. (a) Whenever it is necessary because of lack of work or funds, or whenever it is advisable in the interests of economy, to reduce the staff of any state agency, the appointing power may lay off employees pursuant to this article and department rule. All layoff provisions and procedures established or agreed to under this article shall be subject to State Personnel Board review pursuant to Section 19816.2.

(b) Notwithstanding subdivision (a), this subdivision shall apply to state employees in State Bargaining Unit 5, 6, or 16. Whenever it is necessary because of lack of work or funds, or whenever it is advisable in the interests of economy, to reduce the staff of any state agency, the appointing power may lay off employees pursuant to this article and department rule.

SEC. 48. Section 19997.3 of the Government Code is amended to read:

19997.3. (a) (1) Layoff shall be made in accordance with the relative seniority of the employees in the class of layoff. In determining seniority scores, one point shall be allowed for each complete month of full-time state service regardless of when the service occurred. Department rules shall establish all of the following:

(A) The extent to which seniority credits may be granted for less than full-time service.

(B) The seniority credit to be granted for service in a class that has been abolished, combined, divided, or otherwise altered under the authority of Section 18802.

(C) The basis for determining the sequence of layoff whenever the class and subdivision of layoff includes employees whose service is less than full time.

(D) Any other matters as are necessary or advisable to the operation of this chapter.

(2) Notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 5, 6, or 16. Layoff shall be made in accordance with the relative seniority of the employees in the class of layoff. In determining seniority scores, one point shall be allowed for each complete month of full-time state service regardless of when the service occurred. Department rules shall establish all of the following:

(A) The extent to which seniority credits may be granted for less than full-time service.

(B) The basis for determining the sequence of layoff whenever the class and subdivision of layoff includes employees whose service is less than full time.

(C) Any other matters as are necessary or advisable to the operation of this chapter.

(3) For state employees in State Bargaining Unit 16, less than full-time service shall be prorated.

(b) For professional, scientific, administrative, management, and executive classes, the department shall prescribe standards and methods by rule whereby employee efficiency shall be combined with seniority in determining the order of layoffs and the order of names on reemployment lists. These standards and methods may vary for different classes, and shall take into consideration the needs of state service and practice in private industry and other public employment.

(c) For state employees in State Bargaining Unit 16, prior to laying off, transferring, or demoting permanent or probationary employees, employment for other employees who did not formerly have permanent status shall be terminated in the following sequence: student assistants, retired annuitants, temporary intermittent, limited term, and permanent intermittent appointments. No distinction shall be made between a probationary and permanent employee or between full-time and part-time employees when making layoffs. For layoff purposes employees on leaves of absences shall be treated the same as other employees.

(d) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the

provisions of a memorandum of understanding incurs either present or future costs, or requires the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 49. Section 19997.4 of the Government Code is amended to read:

19997.4. (a) For the purposes of determining seniority pursuant to paragraph (1) of subdivision (a) of Section 19997.3, the term "state service" shall include all service that is exempt from state civil service.

(b) Notwithstanding subdivision (a), this subdivision shall apply only to state employees in State Bargaining Unit 5. For the purposes of determining seniority pursuant to paragraph (2) of subdivision (a) of Section 19997.3, the term "state service" shall include service that is exempted from state civil service by subdivisions (e), (f), (g), (i), and (m) of Section 4 of Article VII of the California Constitution.

(c) Notwithstanding subdivision (a), this subdivision shall apply to state employees in State Bargaining Unit 6 or 16. For the purposes of determining seniority pursuant to paragraph (2) of subdivision (a) of Section 19997.3, the term "state service" shall include service that is exempted from the state civil service by any of the following:

(1) Subdivision (e), (f), (g), (i), or (m) of Section 4 of Article VII of the California Constitution.

(2) Subdivision (a) of Section 4 of Article VII of the California Constitution if an employee provides to the appointing power a copy of his or her official employment history record by July 1, 1999, or within six months of appointment to the state civil service.

SEC. 50. Section 19997.5 of the Government Code is amended to read:

19997.5. (a) Separations that are necessary by reason of reinstatement of an employee or employees after recognized military service as provided for in Section 19780 shall be made by layoff. In making these separations, the regular method of determining the order of layoff shall be used unless this would result in the layoff of an employee who has been reinstated in the class and subdivision of layoff under Section 19780, and in the retention of an employee who was appointed in the class and subdivision of layoff during the time that a reinstated employee was on military leave. Under these circumstances, seniority shall not be counted as provided in Section 19997.3. Instead, service in the subdivision of layoff that qualifies under Section 19997.3 for credit is the only state service that shall be counted.

Whenever such a layoff results in the demotion to a lower class of an employee who has been reinstated after recognized military service as provided in Section 19780, the resulting layoff, if any, in the lower class shall be made as though that reinstated employee had been in that lower class at the time he or she went on military leave.

Any layoff occurring within one year after reinstatement of an employee after recognized military service shall be presumed to have been necessary by reason of reinstatement of an employee or employees under Section 19780 unless the department determines that the reason for layoff is clearly not related to the reinstatement.

(b) Notwithstanding subdivision (a), this subdivision shall apply to state employees in State Bargaining Unit 5, 6, or 16. Separations that are necessary by reason of reinstatement of an employee or employees after recognized military service as provided for in Section 19780 shall be made by layoff. In making these separations, the regular method of determining the order of layoff shall be used.

SEC. 51. Section 19997.6 of the Government Code is amended to read:

19997.6. (a) A veteran, except a veteran who was reinstated from military leave, shall in the event of layoff receive seniority credit for recognized military service if the veteran entered the state service after discharge, the end of the national emergency, or the end of the state military emergency.

(b) Seniority credit for recognized military service shall be computed as if it were service in the class to which the employee was first given permanent civil service or exempt appointment after his or her entry into the state service following recognized military service.

(c) Seniority credit for recognized military service shall not exceed one year's credit if the veteran had no state service prior to entering the military service.

(d) This section shall become operative on July 1, 1993.

(e) Notwithstanding subdivisions (a), (c), and (d), this subdivision shall apply to state employees in State Bargaining Unit 5, 6, or 16. A veteran, except a veteran who was reinstated from military leave, shall in the event of layoff receive a maximum of one year's seniority credit for recognized military service if the veteran entered the state service after discharge, the end of the national emergency, or the end of the state military emergency. For purposes of this subdivision, "recognized military service" means service in a military campaign or expedition for which a medal was authorized by the government of the United States in accordance with Section 300.1 of Title 12 of the California Code of Regulations.

SEC. 52. Section 19997.7 of the Government Code is amended to read:

19997.7. (a) Employees in the class under consideration, up to the number of positions to be abolished or discontinued, shall be laid off in the order as determined under this part. As between two or more of these employees who have the same score, veterans shall have preference in retention. Other ties shall be resolved according to department rule that shall take into consideration other matters of record before names are drawn by lot.

(b) Notwithstanding subdivision (a), this subdivision shall apply to state employees in State Bargaining Unit 5, 6, or 16. Employees in the class under consideration, up to the number of positions to be abolished or discontinued, shall be laid off in the order as determined under this part. As between two or more employees who have the same score, veterans shall have preference in retention. Other ties shall be determined by lot.

SEC. 53. Section 19997.8 of the Government Code is amended to read:

19997.8. (a) (1) In lieu of being laid off an employee may elect demotion to: (A) any class with substantially the same or a lower maximum salary in which he or she had served under permanent or probationary status, or (B) a class in the same line of work as the class of layoff, but of lesser responsibility, if such a class is designated by the department. Whenever a demotion requires a layoff in the elected class, the seniority score for the demoted employee shall be recomputed in that class. The appointing power shall inform the employee in the notice of layoff of the classes to which he or she has the right to demote. To be considered for demotion in lieu of layoff an employee must notify his or her appointing power in writing of his or her election not later than five calendar days after receiving notice of layoff.

(2) Notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 5, 6, or 16. In lieu of being laid off an employee may elect demotion to: (A) any class with substantially the same or a lower maximum salary in which he or she had served under permanent or probationary status, or (B) a class in the same class series as the class of layoff, but of lesser responsibility, or (C) a class in a related line of work as the class of layoff, but of lesser responsibility, if such a class is designated by the department. Whenever a demotion requires a layoff in the elected class, the seniority score for the demoted employee shall be recomputed in that class if necessary. The appointing power shall inform the employee in the notice of layoff of the classes to which he or she has the right to demote. To be considered for demotion in lieu of layoff an employee must notify his or her appointing power in writing of his or her election not later than five calendar days after receiving notice of layoff.

(b) Demotions in lieu of layoff, and layoffs resulting therefrom, shall be governed by this article and shall be made within the subdivisions approved by the department for this purpose. These subdivisions need not be the same as those used to determine the area of layoff under Section 19997.2.

(c) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the

expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 54. Section 19997.11 of the Government Code is amended to read:

19997.11. (a) (1) The names of employees to be laid off or demoted shall be placed upon the reemployment list for the subdivision, if such a subdivision was designated, upon the departmental reemployment list and upon the general reemployment list, for the class from which the employees were laid off or demoted. The department may also place these names upon the general reemployment list for any other appropriate classes as the department determines.

(2) Notwithstanding paragraph (1), this paragraph shall apply only to state employees in State Bargaining Unit 5. The names of employees to be laid off, demoted in lieu of layoff, or transferred in lieu of layoff shall be placed upon the reemployment list for the subdivision, if such a subdivision was designated, upon the departmental reemployment list and upon the general reemployment list, for the class from which the employees were laid off, demoted in lieu of layoff, or transferred in lieu of layoff. The department may also place these names upon the general reemployment list for any other appropriate classes as the department determines.

(3) Notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 6 or 16. The names of employees to be laid off, demoted in lieu of layoff, or transferred in lieu of layoff shall be placed upon the reemployment list for the subdivision, if such a subdivision was designated and upon the departmental reemployment list, for the class from which the employees were laid off, demoted in lieu of layoff, or transferred in lieu of layoff. The department shall also place these names upon the general reemployment list only for the entry level class within the employee's primary demotional pattern. This general reemployment list shall be a rule of one name.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 55. Section 19997.13 of the Government Code is amended to read:

19997.13. (a) (1) An employee compensated on a monthly basis shall be notified that he or she is to be laid off 30 days prior to the effective date of layoff and not more than 60 days after the date of the seniority computation. The notice of layoff shall be in writing and shall contain the reason or reasons for the layoff. An employee to be

laid off may elect to accept this layoff prior to the effective date thereof.

(2) Notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 5, 6, or 16. An employee compensated on a monthly basis shall be notified that he or she is to be laid off 30 days prior to the effective date of layoff. The notice of layoff shall be in writing and shall contain the reason or reasons for the layoff. An employee to be laid off may elect to accept this layoff prior to the effective date thereof.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 56. Section 20037.5 is added to the Government Code, to read:

20037.5. Notwithstanding Section 20035, "final compensation" for a state member who has elected to be subject to Section 21353.5, for the purposes of determining any pension or benefit based on service credited under that section, means the highest average annual compensation earnable by the member during the consecutive 36-month period immediately preceding the effective date of his or her retirement, or the date of his or her last separation from state service if earlier, or during any other period of 36 consecutive months during his or her state membership that the member designates on the application for retirement.

SEC. 57. Section 20068 of the Government Code is amended to read:

20068. (a) "State safety service" means service rendered as a state safety member only while receiving compensation for that service, except as provided in Article 4 (commencing with Section 20990) of Chapter 11. It also includes service rendered in an employment in which persons have since become state safety members and service rendered prior to April 1, 1973, and falling within the definition of warden, forestry, and law enforcement service under this chapter prior to April 1, 1973. "State safety service" pursuant to this subdivision does not include service as an investigator prior to April 1, 1973, within the Department of Justice of persons who prior to April 1, 1973, were classed as miscellaneous members.

(b) "State safety service" with respect to a member who becomes a state safety member pursuant to Section 20405 shall also include service prior to the date on which he or she becomes a state safety member as an officer or employee of the Board of Prison Terms, Department of Corrections, Prison Industry Authority, or the Department of the Youth Authority.

(c) "State safety service" with respect to a member who becomes a state safety member pursuant to Sections 20409 and 20410 shall also include service in a class specified in these sections or service pursuant to subdivision (a), prior to September 27, 1982.

(d) "State safety service," with respect to a member who becomes a state safety member pursuant to Sections 20414 and 20415, shall also include service prior to September 22, 1982, as an officer or employee of the Department of Parks and Recreation or the Military Department.

(e) "State safety service" does not include service in classes specified in Section 20407 prior to January 1, 1989.

(f) "State safety service" does not include service in classes specified in Section 20408 prior to January 1, 1990.

(g) "State safety service," with respect to a member who becomes a state safety member pursuant to subdivision (b) of Section 20405.1, shall also include service rendered in an employment in which persons have since become state safety members, as determined by the Department of Personnel Administration pursuant to that section.

SEC. 58. Section 20405.1 is added to the Government Code, to read:

20405.1. Notwithstanding Section 20405, this section shall apply to state employees in State Bargaining Unit 16.

(a) On and after the effective date of this section, state safety members shall also include officers and employees whose classifications or positions are found to meet the state safety criteria prescribed in Section 19816.20, provided the Department of Personnel Administration agrees to their inclusion. The effective date of safety membership shall be the date on which the department and the employees' exclusive representative reach agreement by memorandum of understanding pursuant to Section 3517.5.

(b) The department shall notify the board as new classes or positions become eligible for state safety membership, as specified in subdivision (a), and specify how service prior to the effective date shall be credited.

(c) Notwithstanding Section 7550.5, the department shall prepare and submit to the Legislature an annual report that contains the classes or positions that are eligible for state safety membership under this section.

(d) Any person designated as a state safety member pursuant to this section may elect, within 90 days of notification by the board, to remain subject to the miscellaneous or industrial service retirement benefit and contribution rate by filing an irrevocable election with the board. A member who so elects shall be subject to the reduced benefit factors specified in Section 21076 or Section 21353 only for service also included in the federal system.

SEC. 59. Section 20677 of the Government Code is amended to read:

20677. (a) (1) The normal rate of contribution for a state miscellaneous member whose service is not included in the federal system shall be 6 percent of the compensation in excess of three hundred seventeen dollars ($317) per month paid that member for service rendered on and after July 1, 1976. The normal rate of contribution for a school member, or a local miscellaneous member shall be 7 percent of the compensation paid that member for service rendered on and after June 21, 1971.

(2) The normal rate of contribution for a state miscellaneous or industrial member, who has elected to be subject to Section 21353.5 and whose service is not included in the federal system, shall be 6 percent of the member's compensation.

(3) The normal rate of contribution as established under this subdivision for a member whose service is included in the federal system, and whose service retirement allowance is reduced under Section 21353, 21353.1, or Section 21354 because of that inclusion, shall be reduced by one-third as applied to compensation not exceeding four hundred dollars ($400) per month for service after the date of execution of the agreement including service in the federal system and prior to termination of the agreement with respect to the coverage group to which he or she belongs.

(b) (1) The normal rate of contribution for a state miscellaneous member whose service has been included in the federal system shall be 5 percent of compensation in excess of five hundred thirteen dollars ($513) per month paid that member for service rendered on and after July 1, 1976.

(2) The normal rate of contribution for a state miscellaneous or industrial member, who has elected to be subject to Section 21353.5 and whose service has been included in the federal system, shall be 5 percent of compensation, subject to the reduction specified in paragraph (3) of subdivision (a).

(c) The normal rate of contribution for a state miscellaneous or industrial member who elects to become subject to Section 21076 or Section 21077 shall be 0 percent, unless the member subsequently elects to become subject to Section 21353, as authorized by subdivision (c) of Section 21070 or Section 21353.5. A member who elects to become subject to Section 21353 shall contribute at the rate specified in paragraph (1) of subdivision (a) or paragraph (1) of subdivision (b), as determined by the member's status with the federal system, and the rate shall be applied from the first of the month following the date of the election. A member who makes the election shall also contribute for service prior to the date the contribution rate was applied, in the manner specified in Section 21073. A member who elected to become subject to Section 21353 solely for service rendered on or after the effective date of the election, as authorized by subdivision (c) of Section 21070 during the period between November 1, 1988, and October 31, 1989, is not required to make the contributions specified in Section 21073.

SEC. 60. Section 20963 of the Government Code is amended to read:

20963. A state, school, or school safety member, whose effective date of retirement is within four months of separation from employment with the employer subject to this section that granted the sick leave credit, shall be credited at his or her retirement with 0.004 year of service credit for each unused day of sick leave certified to the board by the employer. The certification shall report only those days of unused sick leave that were accrued by the member during the normal course of his or her employment and shall not include any additional days of sick leave reported for the purpose of increasing the member's retirement benefit. Reports of unused days of sick leave shall be subject to audit and retirement benefits may be adjusted where improper reporting is found.

Until receipt of certification from an employer concerning unused sick leave, the board may pay an estimated allowance pursuant to this section. At the time of receipt of the certification, the allowance shall be adjusted to reflect any necessary changes.

Notwithstanding any other provisions of this part, this section shall not apply to local members other than local miscellaneous members employed before July 1, 1980, by a school district that is a contracting agency or those school safety members employed before July 1, 1980, by a contracting agency that is a school district or community college district, as defined in subdivision (i) of Section 20057.

This section shall not be applicable to (a) any person who becomes a school member on and after July 1, 1980, and any person who becomes a local member employed, on and after July 1, 1980, by a school district that is a contracting agency whether or not the person was ever a school member or local member prior to that date, or (b) a state employee, with respect to sick leave credits earned as a state member under Section 21353.5, except that the member shall be entitled to receive credit under this section for the sick leave he or she has earned as a state member subject to any other retirement formula, provided the member has a sick leave credit balance remaining at the time of retirement.

For the purposes of this section, sick leave benefits provided to state employees pursuant to the state sick leave system shall be construed to mean compensation paid to employees on approved leaves of absence on account of sickness.

SEC. 61. Section 21071 of the Government Code is amended to read:

21071. (a) Notwithstanding any other provision of this article, except as provided in subdivisions (b) and (c), persons who first become state miscellaneous or state industrial members of the system on or after July 1, 1991, and who are : (1) excluded from the definition of state employee in subdivision (c) of Section 3513; (2) employed by the executive branch of government who are not members of the

civil service; or (3) included in the definition of state employee in subdivision (c) of Section 3513 shall become subject to Section 21076.

(b) Any person who was a member on or before June 30, 1991, eligible to elect membership on or before June 30, 1991, or who was employed in any position on or before June 30, 1991, that would lead to membership as a state member, as defined in Section 20370, and who thereafter enters employment subject to Section 21076 shall be granted the rights provided in subdivision (c) of Section 21070, unless the person had earlier made an irrevocable election to be subject to Section 21076 or 21077. The one-year period in which to make the election provided in subdivision (c) of Section 21070 for any member who became a state member prior to January 1, 1994, shall commence with the mailing of a notice by the system to the member, of his or her election right. The effective date of the election shall be the date on which the member became a state miscellaneous or state industrial member. The member shall be obligated to make the contributions specified in Section 20677.

(c) Effective on or after April 1, 1998, state miscellaneous or industrial members may elect to be subject to the service retirement formula prescribed in Section 21353.5, as an alternative to Second Tier membership under Section 21076. The election shall be provided to eligible members by the appointing authority, and, to be effective, an election must be filed with the board. Eligible members who must be in the employment of the state are defined as members in state bargaining units for which a memorandum of understanding has been agreed to by the state employer and the recognized employee organization to become subject to Section 21353.5. The effective date of a member's election shall be the first day of the month following the date the election is filed with the system.

(d) This section shall not apply to state miscellaneous members employed by the California State University or employees described in Section 20324.

SEC. 62. Section 21073.5 is added to the Government Code, to read:

21073.5. A state Second Tier member, who meets the eligibility definition prescribed in subdivision (c) of Section 21071 may elect to be subject to Section 21353.5 at any time while he or she is in the employment of the state. Upon becoming subject to Section 21353.5, the active member may elect to have his or her past Second Tier service credited under Section 21353.5. A member who elects to receive credit for past service shall pay all reasonable administrative costs and the amount that will be equivalent to the difference between the actuarial present value of the Second Tier service that had accrued to the member's credit and the actuarial present value for the same service had it been credited under Section 21353.5, including interest if deemed necessary, in accordance with the method to be established by the board. The amount shall be contributed in a lump sum or by installments over a period and

subject to minimum payments as may be prescribed by regulations of the board. Payments for administrative costs shall be credited to the current appropriation for support of the board and available for expenditures by the board to fund positions deemed necessary by the board to implement this section.

SEC. 63. Section 21073.6 is added to the Government Code, to read:

21073.6. (a) The election provided to eligible members pursuant to subdivision (c) of Section 21071, to be subject to the service retirement formula prescribed in Section 21353.5, shall be subject to conditions to be established and communicated by the board.

(b) The election provided to eligible members pursuant to Section 21073.5, to have the member's past Second Tier service credited under Section 21353.5, shall first be available no earlier than January 1, 1999, subject to the election procedures to be established and communicated by the board.

(1) Notwithstanding Section 21073.5 which limits to active members the election provided pursuant to Section 21353.5, this election shall also be provided to a member who retired between the date he or she became eligible under subdivision (c) of Section 21071 and the date the election was actually made available by the board.

(2) Notwithstanding Section 21073.5 which limits to active members the election provided pursuant to Section 21353.5, this election shall also be provided to the beneficiary eligible for a continuing allowance upon the death of a member, provided the member had been determined to be eligible under subdivision (c) of Section 21071 but had died before making the election that would have been provided by the board.

(3) The election provided under paragraph (1) or (2) shall be made within 60 days of the mailing date on the election notice sent by the board to the retired member or the member's beneficiary.

SEC. 64. Section 21353.5 is added to the Government Code, to read:

21353.5. The combined current and prior service pensions for a state miscellaneous or industrial member who has elected to be subject to the service retirement formula prescribed in this section, as provided by Sections 21071 and 21073.5, is a pension derived from the contributions of the employer sufficient, when added to the service retirement annuity that is derived from the accumulated normal contributions of the member at the date of retirement, to equal the fraction of one-fiftieth of the member's final compensation set forth opposite the member's age at retirement, taken to the preceding completed quarter year, in the following table, multiplied by the number of years of current and prior service, except service in a category of membership other than that credited under this section, with which the member is entitled to be credited at retirement:

Age of Retirement	Fraction
50	.546
50 1/4	.554
50 1/2	.562
50 3/4	.570
51	.578
51 1/4	.586
51 1/2	.595
51 3/4	.603
52	.612
52 1/4	.621
52 1/2	.630
52 3/4	.639
53	.648
53 1/4	.658
53 1/2	.668
53 3/4	.678
54	.688
54 1/4	.698
54 1/2	.709
54 3/4	.719
55	.730
55 1/4	.741
55 1/2	.753
55 3/4	.764
56	.776
56 1/4	.788
56 1/2	.800
56 3/4	.813
57	.825
57 1/4	.839
57 1/2	.852
57 3/4	.865
58	.879
58 1/4	.893
58 1/2	.908
58 3/4	.923
59	.937
59 1/4	.953
59 1/2	.969

$59^3/_4$	.985
60 and over	1.000

The fractions specified in the above table shall be reduced by one-third as applied to that part of final compensation which does not exceed four hundred dollars ($400) per month for all service of a member any of whose service has been included in the federal system.

The retirement allowance provided by this section, which shall be effective for members who retire on and after April 1, 1998, is granted subject to future reduction prior to a member's retirement, by offset of federal system benefits or otherwise, as the Legislature may from time to time deem appropriate because of changes in such federal system benefits.

SEC. 65. Section 21423 of the Government Code is amended to read:

21423. The disability retirement pension, for service subject to Section 21353, for a member whose effective date of retirement is on or after the operative date of the amendments to this section at the 1972 Regular Session, or for service subject to Section 21353.5, for a member whose effective date of retirement is on or after the operative date of the amendments to this section at the 1997–98 Regular Session, shall be such an amount as with that portion of his or her annuity provided by his or her accumulated normal contributions, will make his or her disability retirement allowance equal:

(a) Ninety percent of one-fiftieth of his or her final compensation multiplied by the number of years of service credited to him or her.

(b) If the disability retirement allowance computed under subdivision (a) does not exceed one-third of his or her final compensation, 90 percent of one-fiftieth of his final compensation multiplied by the number of years of service which would be creditable to him or her were his or her service to continue until attainment by him or her of age 60, but in that case the retirement allowance shall not exceed one-third of final compensation.

Subdivision (b) is not applicable to members who are not entitled, at the time of retirement, to be credited with at least 10 years of state service.

SEC. 66. Section 22013.8 of the Government Code is amended to read:

22013.8. "Policeman" as used in this part also includes persons employed in classifications listed in Sections 20405 and 20405.1, if that designation is not contrary to any definition, ruling, or regulation relating to the term "policeman" issued by the federal agency for the purposes of Section 218(d)(5)(A) of the Social Security Act.

SEC. 67. Section 22754 of the Government Code is amended to read:

22754. As used in this part the following definitions, unless the context otherwise requires, shall govern the interpretation of terms:

(a) "Board" means the Board of Administration of the Public Employees' Retirement System.

(b) "Employee" means:

(1) Any officer or employee of the State of California or of any agency, department, authority, or instrumentality of the state including the University of California, or any officer or employee who is a local or school member of the Public Employees' Retirement System employed by a contracting agency that has elected to be or otherwise has become subject to this part, or who is a member or retirant of the State Teachers' Retirement System employed by an employer who has elected to become subject to this part, or who is an employee or annuitant of a special district or county subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3) that has elected to become subject to this part, or who is an employee or annuitant of a special district, as defined in subdivision (i), that has elected to become subject to this part, except persons employed on an intermittent, irregular or less than half-time basis, or employees similarly situated, or employees in respect to whom contributions by the state for any type of plan or program offering prepaid hospital and medical care are otherwise authorized by law.

(2) Any officer or employee who participates in the retirement system of a contracting agency as defined in paragraph (2) of subdivision (g) that has elected to become subject to this part, except persons employed less than half time or who are otherwise determined to be ineligible.

(3) Any annuitant of the Public Employees' Retirement System employed by a contracting agency as defined in subdivision (g) that has elected to become subject to this part who is a person retired under Section 21228.

(4) Notwithstanding paragraph (1), "eligible employee" of the State of California, as it applies to state employees in State Bargaining Unit 16, means (A) a permanent employee appointed half time or more; (B) an employee who is a limited term or temporary authorization appointee who continues coverage based on prior continuous permanent status; (C) an employee who is in a half time or more limited-term appointment shall qualify after working six consecutive months; and (D) an employee appointed half time or more to a temporary appointment in lieu of a permanent appointment; and (E) a permanent intermittent employee who works a minimum of 480 hours in a six-month control period. All other limited-term, nonstatus employees as defined by the Department of Personnel Administration and temporary authorization employees are not eligible.

(c) "Carrier" means a private insurance company holding a valid outstanding certificate of authority from the Insurance

Commissioner of the state, a medical society or other medical group, a nonprofit hospital service plan qualifying under Chapter 11A (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code, or nonprofit membership corporation lawfully operating under Section 9200 or Section 9201 of the Corporations Code, or a health care service plan as defined under subdivision (f) of Section 1345 of the Health and Safety Code, or a health maintenance organization approved under Title XIII of the federal Public Health Services Act, which is lawfully engaged in providing, arranging, paying for, or reimbursing the cost of personal health services under insurance policies or contracts, medical and hospital service agreements, membership contracts, or the like, in consideration of premiums or other periodic charges payable to it.

(d) "Health benefits plan" means any program or entity that provides, arranges, pays for, or reimburses the cost of health benefits.

(e) "Annuitant" means:

(1) Any person who has retired within 120 days of separation from employment and who receives any retirement allowance under any state or University of California retirement system to which the state was a contributing party.

(2) A family member receiving an allowance as the survivor of an annuitant who has retired as provided in paragraph (1), or as the survivor of a deceased employee under Section 21541, 21546, or 21571 or similar provisions of any other state retirement system.

(3) Any employee who has retired under the retirement system provided by a contracting agency as defined in paragraph (2) of subdivision (g) and who receives a retirement allowance from that retirement system, or a surviving family member who receives the retirement allowance in place of the deceased.

(4) Any person who was a state member for 30 years or more and who, at the time of retirement, was a local member employed by a contracting agency.

(f) (1) "Family member" means an employee's or annuitant's spouse and any unmarried child (including an adopted child, a stepchild, or recognized natural child who lives with the employee or annuitant in a regular parent-child relationship). The board shall, by regulation, prescribe age limits and other conditions and limitations pertaining to unmarried children.

(2) Notwithstanding paragraph (1), this paragraph shall apply only to state employees, as defined in Section 19815, that are in State Bargaining Unit 5. "Family member" only means an employee's legal spouse and any unmarried child, adopted child, stepchild, recognized natural child, or legal ward living with the employee in a regular parent-child relationship.

(g) "Contracting agency" means:

(1) Any contracting agency as defined in Section 20022, any county or special district subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section

31450) of Part 3 of Division 4 of Title 3), and any special district, school district, county board of education, personnel commission of a school district or a county superintendent of schools.

(2) Any public body or agency of, or within California not covered by the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3), which provides a retirement system for its employees funded wholly or in part by public funds.

(h) "Employer" means the state, any contracting agency employing an employee, and any agency which has elected to become subject to this part pursuant to Section 22856.

(i) "Special district" means a nonprofit, self-governed public agency, within the State of California and comprised solely of public employees, performing a governmental rather than proprietary function.

SEC. 68. Section 22754.5 is added to the Government Code, to read:

22754.5. (a) Notwithstanding Section 22754, for state employees in State Bargaining Unit 16 and members of State Bargaining Unit 16 who retire on or after the effective date of this section and who meet the definition of annuitant, "eligible family member" means:

(1) The legal spouse in a marriage recognized by the state.

(2) A child under the age of 19 years who has never been married or who has obtained a legal annulment. This includes:

(A) The natural or adopted child, or stepchild of the employee or annuitant.

(B) A child, who is not the natural or adopted child, or stepchild of the employee or annuitant and who is not receiving or eligible for coverage through another source and who meets either of the following conditions:

(i) The employee or annuitant has legal or joint custody of the child.

(ii) The child is a grandchild living in the household of the employee or annuitant, and the natural parent or parents are not living in the same household.

(3) A child over the age of 19 years but under the age of 23 years who has never been married or who has obtained a legal annulment and meets the criteria of subparagraph (A) or (B) of paragraph (2) may continue to be enrolled if the child is one of the following:

(A) Enrolled on an ongoing basis as a college student for at least nine semester college units or equivalent quarter units.

(B) Enrolled on an ongoing basis in an adult continuation school curriculum that would result in high school diploma or its equivalent. An employee or annuitant whose child continues to be enrolled under this paragraph must provide the employer or benefit carrier with an annual certification of schooling or enrollment upon request.

(4) A child under the age of 19 years who has never been married or who has obtained a legal annulment may continue to be enrolled after attaining the age of 19 years if he or she is incapable of self-support because of physical disability or mental incapacity and he or she is dependent on the employee or annuitant for support and care. A disabled child may continue to be enrolled after attaining the age of 19 years only if he or she was enrolled as disabled at the time of the employee's initial enrollment or became disabled while enrolled as an eligible family member prior to attaining the age of 19 years. The employee or annuitant must provide satisfactory evidence of the disability within 60 days after the disabled child attains the age of 19 years. Necessary documentation as prescribed by the employer must be completed, processed, and approved by the Public Employees' Retirement System. An annual certification of continued disability may be required.

(b) At the time of enrollment or audit, an employee or annuitant will be required to provide proof of eligibility for all enrolled family members that may include any of the following: (1) a valid marriage certificate, (2) a birth certificate, (3) a certification of disability, (4) legal custody documents, and (5) a copy of the employee's or annuitant's signed state income tax return.

SEC. 69. Section 22955 of the Government Code is amended to read:

22955. (a) Notwithstanding Sections 22953 and 22954, an employee in State Bargaining Unit 6 or 16 who becomes a state member of the Public Employees' Retirement System after January 1, 1998, and who is included in the definition of state employee in subdivision (c) of Section 3513 shall not receive any portion of the employer's contribution payable for annuitants, pursuant to Sections 22953 and 22954, unless the employee is credited with 10 years or more of state service, as defined by this section, at the time of retirement. This subdivision shall have retroactive application to state employees in State Bargaining Unit 16 who become a state member of the Public Employees' Retirement System after January 1, 1998, but prior to the effective date of the amendments to this section by the Legislature at the 1997–98 Regular Session.

(b) The percentage of employer's contribution amount payable for postretirement dental care benefits for an employee subject to this section shall be based on the funding provision of the plan and the member's completed years of state service at retirement as shown in the following table:

Credited Years of Service	Percentage of Employer Contribution
10	50
11	55

12	60
13	65
14	70
15	75
16	80
17	85
18	90
19	95
20	100

(c) This section shall only apply to state employees who retire for service.

(d) Benefits provided to an employee subject to this section shall be applicable to all future state service.

(e) For purposes of this section, "state service" means service rendered as an employee or an appointed or elected officer of the state for compensation. In those cases where the state assumes or has assumed from a public agency a function and the related personnel, service rendered by that personnel for compensation as employees or appointed or elected officers of that local public agency shall not be credited, at retirement, as state service for the purposes of this section, unless the former employer has paid or agreed to pay the state agency the amount actuarially determined to equal the cost for any employee dental benefits that were vested at the time that the function and the related personnel were assumed by the state. For noncontracting local public agencies the state department shall certify the completed years of local agency service to be credited to the employee to the Public Employees' Retirement System at the time of separation for retirement.

(f) Whenever the state contracts to assume a local public agency function, completed years of service rendered by the personnel for compensation as employees or appointed or elected officers of the local public agency shall be credited as state service only upon a finding by the Department of Finance that the contract contains a benefit factor sufficient to reimburse the state for the amount necessary to compensate the state fully for postretirement dental benefit costs for those personnel.

(g) This section shall not apply to employees of the California State University or the Legislature.

SEC. 70. 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 in this section. 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 entered into by the Department of Personnel Administration for state employees in State Bargaining Unit 16 for employee benefits, occupational health and safety, training services, or combination thereof 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. 71. Section 10344.1 is added to the Public Contract Code, to read:

10344.1. The Department of Personnel Administration, with respect to contracts entered into by the department for state employees in State Bargaining Unit 16 for employee benefits, occupational health and safety, training services, or any combination thereof, shall provide all qualified bidders with a fair opportunity to enter the bidding process, therefore stimulating competition in a manner conducive to sound fiscal practices. The Department of Personnel Administration shall make available to any member of the public its guidelines for awarding these contracts, and to the extent feasible, implement the objectives set forth in Section 10351.

SEC. 72. Section 10430 of the Public Contract Code is amended to read:

10430. This chapter does not apply to any of the following:

(a) The Regents of the University of California.

(b) Transactions covered under Chapter 3 (commencing with Section 12100).

(c) Except as otherwise provided in this chapter, any entity exempted from the provisions of Section 10295 or 10295.1. However, the Trustees of the California State University shall be governed by this chapter except with regard to transactions covered under the

California State University and Colleges Contract Law, and except as provided in Sections 10295, 10335, 10356, and 10389.

(d) Transactions covered under Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

(e) Except as provided for in subdivision (c), members of boards or commissions who receive no payment other than payment of each meeting of the board or commission, payment for preparatory time, and payment for per diem.

(f) The emergency purchase of protective vests for correctional peace officers whose duties require routine contact with state prison inmates. This subdivision shall remain operative only until January 1, 1987.

(g) Spouses of state officers or employees and individuals and entities that employ spouses of state officers and employees, that are vendored to provide services to regional center clients pursuant to Section 4648 of the Welfare and Institutions Code if the vendor of services, in that capacity, does not receive any material financial benefit, distinguishable from the benefit to the public generally, from any governmental decision made by the state officer or employee.

SEC. 73. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the provisions of this act relating to state employees may become effective at the earliest possible time, it is necessary that this act go into immediate effect.

CHAPTER 89

An act to amend Sections 1500, 2571, 2572, 10554, 16197, 17047, 33050, 41012, 41202, 41601, 41972, 42129, 46200.5, 46201.5, 54732, 56131, 56132, 56136, 56155.5, 56156.6, 56195.7, 56200, 56205, 56207, 56211, 56212, 56325, 56361, 56364.1, 56365, 56366, 56366.3, 56446, 56832, 56835.04, 56836.01, 56836.02, 56836.03, 56836.05, 56836.06, 56836.08, 56836.09, 56836.12, 56836.13, 56836.15, 56836.155, 56836.16, 56836.21, and 56864 of, to amend and repeal Section 56156.5 of, to add Sections 42238.95, 56048, 56156.4, and 56195.10 to, and to repeal Sections 41202, 56160, 56161, 56169, 56441.10, and 56447 of, the Education Code, and to amend Sections 97.2 and 97.3 of the Revenue and Taxation Code, relating to special education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 30, 1998. Filed with Secretary of State June 30, 1998.]

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

SECTION 1. Section 1500 of the Education Code is amended to read:

1500. All expenses shall be paid out of the County School Service Fund necessary for the county board of education and the county superintendent of schools to perform the duties and render the services required by and comply with Sections 1042, 1250, 1252, 1270, 1297, 1299, 1330, 1601, 1602, 1702, 41020, 41360, 42621, 42622, 45035, 45056, 60601, 60602, 60605, 84040, 85221, 85222, 87809, Chapter 7.2 (commencing with Section 56836) of Part 30, and Part 1 (commencing with Section 100) of Division 1 of the Unemployment Insurance Code.

This section shall not be construed to prohibit support from the county general fund from being provided for duties and services performed pursuant to the sections and part enumerated above.

SEC. 2. Section 2571 of the Education Code is amended to read:

2571. The Superintendent of Public Instruction shall make the following computations for each county superintendent of schools:

(a) Add the property tax revenues received for the 1977–78 fiscal year pursuant to subdivisions (b), (c) and (d) of Section 2500, Section 2501 for purposes of Section 1705, Section 2502 for purposes of Section 56811, Section 2505 for special education tuition charges, Section 42909 for purposes of Section 56604, and Section 56364 or Section 56346.2, as applicable. For purposes of this subdivision, section references are to sections effective during the 1977–78 fiscal year.

(b) Divide the sum computed pursuant to subdivision (a) by the total amount of property tax revenues received by the county superintendent of schools for the 1977–78 fiscal year.

(c) Multiply the quotient computed pursuant to subdivision (b) by the total amount of property tax revenues received by the county superintendent of schools for the then current fiscal year.

(d) Subtract the product computed pursuant to subdivision (c) from the total amount of property tax revenues received by the county superintendent of schools for the then current fiscal year.

(e) For purposes of subdivisions (c) and (d), "total property tax revenues" include taxes on the secured roll, taxes on the unsecured roll, prior year taxes and subventions of property taxes.

SEC. 3. Section 2572 of the Education Code is amended to read:

2572. The product computed pursuant to subdivision (c) of Section 2571 is the amount of property tax revenues to be allocated to special education programs. This amount shall be subtracted pursuant to subdivision (c) of Section 56836.08.

SEC. 4. Section 10554 of the Education Code is amended to read:

10554. (a) In order for the governing board to carry out its responsibilities pursuant to this chapter, there is hereby established the Educational Telecommunication Fund. The amount of moneys to be deposited in the fund shall be the amount of any offset made

to the principal apportionments made pursuant to Sections 1909, 2558, 42238, 52616, Article 1.5 (commencing with Section 52335) of Chapter 9 of Part 28, and Chapter 7.2 (commencing with Section 56836) of Part 30, based on a finding that these apportionments were not in accordance with law. The maximum amount that may be annually deposited in the fund from the offset shall be one million dollars ($1,000,000), or if the total of the offset is less than one million dollars ($1,000,000), then the total amount of the offset. The Controller shall establish an account to receive and expend moneys in the fund. The placement of the moneys in the fund shall occur only upon a finding by the Superintendent of Public Instruction and the Director of Finance that the principal apportionments made pursuant to Sections 1909, 2558, 42238, 52616, and Article 1.5 (commencing with Section 52335) of Chapter 9 of Part 28, and Chapter 7.2 (commencing with Section 56836) of Part 30, were not in accordance with existing law, and were so identified pursuant to Sections 1624, 14506, 41020, 41020.2, 41320, 42127.2, and 42127.3, or an independent audit that was approved by the State Department of Education.

(b) Moneys in the fund established pursuant to subdivision (a) shall only be available for expenditure upon appropriation by the Legislature in the Budget Act.

(c) The moneys in the fund established pursuant to subdivision (a) may be expended by the governing board to carry out the purposes of this chapter, including for the following purposes:

(1) To support the activities of the team established pursuant to subdivision (c) of Section 10551.

(2) To assist the school districts and county superintendents of schools in purchasing both hardware and software to allow school districts, county superintendents of schools, and the State Department of Education to be linked for school business and administrative purposes. The governing board shall establish a matching share requirement that applicant school districts and county superintendents of schools must fulfill to receive those funds. It is the intent of the Legislature to encourage the distribution of grants to school districts and county superintendents of schools to the widest extent possible.

(3) To provide technical assistance through county offices of education to school districts in implementing the standards established pursuant to subdivision (a) of Section 10552.

(d) This section shall become inoperative as of January 1, 2000.

SEC. 5. Section 16197 of the Education Code is amended to read:

16197. Notwithstanding any other provisions of this article to the contrary, apportionments for the purchase of mobile classrooms for the education of physically handicapped pupils enrolled in integrated programs, as set forth in Part 30 (commencing with Section 56000), and for the education and therapy of speech-handicapped pupils may, subject to the approval of the State

Department of Education, be made to any school district not otherwise eligible to receive apportionments under Article 1 (commencing with Section 16000) and Article 2 (commencing with Section 16150) for that purpose.

The State Department of Education may approve applications in those situations where mobile classrooms will be used by a county superintendent of schools required to educate physically handicapped minors pursuant to Sections 1850 and Chapter 7.2 (commencing with Section 56836) of Part 30. Mobile classrooms shall be used pursuant to an agreement authorized by Section 41308.

Except as otherwise provided in this section, not more than 50 percent of the amount of any apportionment made pursuant to this section shall be repaid. Repayments shall be made in the following manner: Fifty percent of the amount of the apportionment shall be repaid in full with interest by the district, in annual amounts and at an interest rate over the period as the State Allocation Board may determine, not to exceed 20 years from the date the apportionment became final. In any school year in which 50 percent or more of the pupils in average daily attendance, as determined by the county superintendent of schools, and served by the facilities are not pupils from districts other than the applicant district, the repayment for the succeeding fiscal year shall be an amount which would have been payable if the district had been required to repay 100 percent of the apportionment over that period.

The county board of supervisors of the county whose superintendent of schools uses mobile classrooms during any fiscal year shall at the time or times within the fiscal year as may be agreed upon between the county and the school district, but in any case not later than the end of the fiscal year, pay to the school district having the obligation to repay the apportionment made under this section for the purchase of mobile classrooms, an amount equal to 100 percent of the amount the district is required to repay in the fiscal year with respect to the apportionment described above.

The county board of supervisors shall raise the amount required through a general tax levy on the property within the participating districts, or through a tuition charge not to exceed one hundred sixty dollars ($160) a year per pupil by the county superintendent of schools to the school districts of residence of pupils attending the facility including the district having the obligation to repay, or through a combination of these.

The county superintendent of schools shall notify the county board of supervisors of his or her intention to approve a school district's application for an allocation under this article before he or she approves the application.

The State Department of Education shall prepare specifications or regulations for the construction of mobile classrooms to provide for a useful life of no less than 20 years.

The use of mobile classrooms shall meet specifications described by the State Department of Education as they relate to the needs of the physically handicapped pupils being served, as set forth in Chapter 7.2 (commencing with Section 56836) of Part 30.

SEC. 6. Section 17047 of the Education Code is amended to read:

17047. (a) The allowable new building area for the purpose of providing special day class and Resource Specialist Program facilities for special education pupils shall be negotiated and approved by the State Allocation Board, with any necessary assistance to be provided by the Special Education Division of the State Department of Education. The square footage allowances shall be computed within the maximum square footage set forth in the following schedule:

Special Day Class Basic Need	Grade Levels	Loading*	Square Footage
Nonsevere Disability			
—Specific Learning Disability	All	12	1080
—Mildly Mentally Retarded	All	12	1080
—Severe Disorder of Language	All	10	1080
Severe Disability			
—Deaf and Hard of Hearing	All	10	1080
—Visually Impaired	All	10	1330 (1080 + 250 storage)
—Orthopedically and Other Health Impaired	All	12	2000 (1080 + 400 toilets + 250 storage + 270 daily living skills + 3000 therapy + 750 therapy per additional classroom)
—Autistic	All	6	1160 (1080 + 80 toilets)
—Severely Emotionally Disturbed	All	6	1160 (1080 + 80 toilets)
—Severely Mentally Retarded	Elem.	12	1750 (1080 + 400 toilets + 270 daily living skills)

	Secon.		2150 (1080 + 400 toilets + 270 daily living skills + 400 vocational)
—Developmentally Disabled	All	10	2000 (1080 + 400 toilets + 250 storage + 270 daily living skills + 3000 therapy** + 750 therapy per additional CR)
—Deaf−Blind/Multi	All	5	1400 (1080 + 200 storage + 150 toilets)

			Square
		Pupils	Feet
Resource Specialist Program for those pupils with disabling conditions whose needs have been identified by the Individualized Education Program (IEP) Team, who require special education for a portion of the day, and who are assigned to a regular classroom for a majority of the schoolday.***	All Maximum caseload for RS is 28, not all served at same time.	1–8	240
		9–28	480
		29–37	720
		38–56	960
		57–65	1200
		66–85	1440
		86–94	1680
		95–112	1920

* Special pupils may usually be grouped without accordance to type, especially in smaller districts or where attendance zones may indicate, to maximize loadings per classroom where there are children with similar educational needs (Sec. 56364 or 56346.2, as applicable).

** Therapy add−ons not to be provided if on same site as orthopedically impaired.

*** To a maximum of 4 percent of the unhoused average daily attendance of the district, per new school or addition, to a maximum of 1920 square feet.

(b) The allowable new building area shall be computed by dividing the number of eligible pupils by the minimum required loading per classroom for special day classes for the type of pupils to be enrolled. No new or additional facility shall be provided for special

day classes unless the number of additional eligible pupils equals one-third or more of the minimum required loading.

SEC. 7. Section 33050 of the Education Code is amended to read:

33050. (a) The governing board of a school district or a county board of education may, on a districtwide or countywide basis or on behalf of one or more of its schools or programs, after a public hearing on the matter, request the State Board of Education to waive all or part of any section of this code or any regulation adopted by the State Board of Education that implements a provision of this code that may be waived, except:

(1) Article 1 (commencing with Section 15700) and Article 2 (commencing with Section 15780) of Chapter 6 of Part 10.

(2) Chapter 8 (commencing with Section 16000) and Chapter 9 (commencing with Section 16400) of Part 10.

(3) Chapter 22 (commencing with Section 17700), Chapter 23 (commencing with Section 17760), and Chapter 25 (commencing with Section 17785) of Part 10.

(4) Part 13 (commencing with Section 22000).

(5) Section 35735.1.

(6) Paragraph (8) of subdivision (a) of Section 37220.

(7) The following provisions of Part 23:

(A) Chapter 1 (commencing with Section 39000).

(B) Article 1 (commencing with Section 39100) to Article 6 (commencing with Section 39210), inclusive, of Chapter 2.

(C) Section 39248; Sections 39313 to 39325, inclusive; Sections 39360.5 and 39363 and subdivision (a) of Section 39363.5; and Sections 39618 to 39621, inclusive.

(8) Sections 52163, 52165, 52166, and 52178.

(9) Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.

(10) The identification and assessment criteria relating to any categorical aid program, including Sections 52164.1 and 52164.6.

(11) Sections 41000 to 41360, inclusive; Sections 41420 to 41423, inclusive; Sections 41600 to 41866, inclusive; Sections 41920 to 42911, inclusive; Article 3 (commencing with Section 44930) of Chapter 4 of Part 25; Part 26 (commencing with Section 46000) and Chapter 6 (commencing with Section 48900) and Chapter 6.5 (commencing with Section 49060) of Part 27; or regulations in Title 5 of the California Code of Regulations adopted pursuant to Article 3 (commencing with Section 44930) of Chapter 4 of Part 25.

(12) Section 51513.

(13) Chapter 6.10 (commencing with Section 52120) of Part 28, relating to the Class Size Reduction Program.

(14) Section 56364.1, except that this restriction shall not prohibit the State Board of Education from approving any waiver of Section 56364 or Section 56346.2, as applicable, relating to full inclusion.

(15) Article 4 (commencing with Section 60640) of Chapter 5 of Part 33, relating to the STAR Program, and any other provisions of

Chapter 5 (commencing with Section 60600) of Part 33 that establish requirements for the STAR Program.

(b) Any waiver of provisions related to the programs identified in Section 52851 shall be granted only pursuant to Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.

(c) The waiver of an advisory committee required by law shall be granted only pursuant to Article 4 (commencing with Section 52870) of Chapter 12 of Part 28.

(d) Any request for a waiver submitted by the governing board of a school district or a county board of education pursuant to subdivision (a) shall include a written statement as to (1) whether the exclusive representative of employees, if any, as provided in Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, participated in the development of the waiver and (2) the exclusive representative's position regarding the waiver.

(e) Any request for a waiver submitted pursuant to subdivision (a) relating to a regional occupational center or program established pursuant to Article 1 (commencing with Section 52300) of Chapter 9 of Part 28, that is operated by a joint powers entity established pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, shall be submitted as a joint waiver request for each participating school district and shall meet both of the following conditions:

(1) Each joint waiver request shall comply with all of the requirements of this article.

(2) The submission of a joint waiver request shall be approved by a unanimous vote of the governing board of the joint powers agency.

(f) The governing board of any school district requesting a waiver under this section of any provision of Article 5 (commencing with Section 39390) of Chapter 3 of Part 23 shall provide written notice of any public hearing it conducted pursuant to subdivision (a), at least 30 days prior to the hearing, to each public agency identified under Section 39394.

SEC. 8. Section 41012 of the Education Code is amended to read:

41012. For purposes of determining allowances pursuant to Chapter 8 (commencing with Section 52200) of Part 28, and Chapter 3 (commencing with Section 56500) and Chapter 4 (commencing with Section 56600) of Part 30, the Superintendent of Public Instruction shall require the use of a uniform cost accounting procedure, as set forth in the California School Accounting Manual.

SEC. 9. Section 41202 of the Education Code, as added by Chapter 82 of the Statutes of 1989, is repealed.

SEC. 10. Section 41202 of the Education Code, as amended by Chapter 308 of the Statutes of 1995, is amended to read:

41202. The words and phrases set forth in subdivision (b) of Section 8 of Article XVI of the Constitution of the State of California shall have the following meanings:

(a) "Moneys to be applied by the State," as used in subdivision (b) of Section 8 of Article XVI of the California Constitution, means appropriations from the General Fund that are made for allocation to school districts, as defined, or community college districts. An appropriation that is withheld, impounded, or made without provisions for its allocation to school districts or community college districts, shall not be considered to be "moneys to be applied by the State."

(b) "General Fund revenues which may be appropriated pursuant to Article XIII B," as used in paragraph (1) of subdivision (b) of Section 8 of Article XVI, means General Fund revenues that are the proceeds of taxes as defined by subdivision (c) of Section 8 of Article XIII B of the California Constitution, including, for the 1986–87 fiscal year only, any revenues that are determined to be in excess of the appropriations limit established pursuant to Article XIII B for the fiscal year in which they are received. General Fund revenues for a fiscal year to which paragraph (1) of subdivision (b) is being applied shall include, in that computation, only General Fund revenues for that fiscal year that are the proceeds of taxes, as defined in subdivision (c) of Section 8 of Article XIII B of the California Constitution, and shall not include prior fiscal year revenues. Commencing with the 1995–96 fiscal year, and each fiscal year thereafter, "General Fund revenues that are the proceeds of taxes," as defined in subdivision (c) of Section 8 of Article XIII B of the California Constitution, includes any portion of the proceeds of taxes received from the state sales tax that are transferred to the counties pursuant to, and only if, legislation is enacted during the 1995–96 fiscal year the purpose of which is to realign children's programs. The amount of the proceeds of taxes shall be computed for any fiscal year in a manner consistent with the manner in which the amount of the proceeds of taxes was computed by the Department of Finance for purposes of the Governor's Budget for the Budget Act of 1986.

(c) "General Fund revenues appropriated for school districts," as used in paragraph (1) of subdivision (b) of Section 8 of Article XVI of the California Constitution, means the sum of appropriations made that are for allocation to school districts, as defined in Section 41302.5, regardless of whether those appropriations were made from the General Fund to the Superintendent of Public Instruction, to the Controller, or to any other fund or state agency for the purpose of allocation to school districts. The full amount of any appropriation shall be included in the calculation of the percentage required by paragraph (1) of subdivision (b) of Article XVI, without regard to any unexpended balance of any appropriation. Any reappropriation of funds appropriated in any prior year shall not be included in the sum of appropriations.

(d) "General Fund revenues appropriated for community college districts," as used in paragraph (1) of subdivision (b) of Section 8 of

Article XVI of the California Constitution, means the sum of appropriations made that are for allocation to community college districts, regardless of whether those appropriations were made from the General Fund to the Controller, to the Chancellor of the California Community Colleges, or to any other fund or state agency for the purpose of allocation to community college districts. The full amount of any appropriation shall be included in the calculation of the percentage required by paragraph (1) of subdivision (b) of Article XVI, without regard to any unexpended balance of any appropriation. Any reappropriation of funds appropriated in any prior year shall not be included in the sum of appropriations.

(e) "Total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as used in paragraph (2) or (3) of subdivision (b) of Section 8 of Article XVI of the California Constitution, means the sum of appropriations made that are for allocation to school districts, as defined in Section 41302.5, and community college districts, regardless of whether those appropriations were made from the General Fund to the Controller, to the Superintendent of Public Instruction, to the Chancellor of the California Community Colleges, or to any other fund or state agency for the purpose of allocation to school districts and community college districts. The full amount of any appropriation shall be included in the calculation of the percentage required by paragraph (2) or (3) of subdivision (b) of Section 8 of Article XVI, without regard to any unexpended balance of any appropriation. Any reappropriation of funds appropriated in any prior year shall not be included in the sum of appropriations.

(f) "General Fund revenues appropriated for school districts and community college districts, respectively" and "moneys to be applied by the state for the support of school districts and community college districts," as used in Section 8 of Article XVI of the California Constitution, shall include funds appropriated for the Child Care and Development Services Act pursuant to Chapter 2 (commencing with Section 8200) of Part 6 and shall not include any of the following:

(1) Any appropriation that is not made for allocation to a school district, as defined in Section 41302.5, or to a community college district regardless of whether the appropriation is made for any purpose that may be considered to be for the benefit to a school district, as defined in Section 41302.5, or a community college district. This paragraph shall not be construed to exclude any funding appropriated for the Child Care and Development Services Act pursuant to Chapter 2 (commencing with Section 8200) of Part 6.

(2) Any appropriation made to the Teachers' Retirement Fund or to the Public Employees' Retirement Fund except those appropriations for reimbursable state mandates imposed on or before January 1, 1988.

(3) Any appropriation made to service any public debt approved by the voters of this state.

(g) "Allocated local proceeds of taxes," as used in paragraph (2) or (3) of subdivision (b) of Section 8 of Article XVI of the California Constitution, means, for school districts as defined, those local revenues, except revenues identified pursuant to paragraph (5) of subdivision (h) of Section 42238, that are used to offset state aid for school districts in calculations performed pursuant to Sections 2558, 42238, and Chapter 7.2 (commencing with Section 56836) of Part 30.

(h) "Allocated local proceeds of taxes," as used in paragraph (2) or (3) of subdivision (b) of Section 8 of Article XVI of the California Constitution, means, for community college districts, those local revenues that are used to offset state aid for community college districts in calculations performed pursuant to Section 84700. In no event shall the revenues or receipts derived from student fees be considered "allocated local proceeds of taxes."

(i) For the purposes of calculating the 4 percent entitlement pursuant to subdivision (a) of Section 8.5 of Article XVI of the California Constitution, "the total amount required pursuant to Section 8(b)" shall mean the General Fund aid required for schools pursuant to subdivision (b) of Section 8 of Article XVI of the California Constitution, and shall not include allocated local proceeds of taxes.

SEC. 11. Section 41601 of the Education Code is amended to read:

41601. For the purposes of this chapter, the governing board of each school district shall report to the Superintendent of Public Instruction during each fiscal year the average daily attendance of the district for all full school months during (1) the period between July 1 and December 31, inclusive, to be known as the "first period" report for the first principal apportionment, and (2) the period between July 1 and April 15, inclusive, to be known as the "second period" report for the second principal apportionment. Each county superintendent of schools shall report the average daily attendance for the schools and classes maintained by him or her and the average daily attendance for the county school tuition fund.

Each report shall be prepared in accordance with instructions on forms prescribed and furnished by the Superintendent of Public Instruction. Average daily attendance shall be computed in the following manner:

(a) The average daily attendance in the regular elementary, middle, and high schools, including continuation schools and classes, opportunity schools and classes, and special day classes, maintained by the school districts shall be determined by dividing the total number of days of attendance allowed in all full school months in each period by the number of days the schools are actually taught in all full school months in each period, exclusive of Saturdays or Sundays and exclusive of weekend makeup classes pursuant to Section 37223.

(b) The attendance for schools and classes maintained by a county superintendent of schools and the county school tuition fund shall be reported in the same manner as reported by school districts. The

average daily attendance in special education classes operated by county superintendents of schools shall be determined in the same manner as all other attendance under subdivision (a). The average daily attendance in all other schools and classes maintained by the county superintendents of schools shall be determined by dividing the total number of days of attendance in all full school months in the first period by a divisor of 70, in the second period by 135 and at annual time by 175. For attendance in special classes and centers pursuant to Section 56364 or Section 56346.2, as applicable, the average daily attendance shall be reported by the county superintendents of schools, but credited for revenue limit purposes to the district in which the pupil resides.

(c) The days of attendance in classes for adults and regional occupational centers programs shall be reported in the same manner as all other attendance under subdivision (a). The average daily attendance in those schools and classes shall be determined by dividing the total number of days of attendance in all full school months in the first period by a divisor of 85 in the second period by 135 and at annual time by 175.

SEC. 12. Section 41972 of the Education Code is amended to read:

41972. Balances available from any appropriation for apportionments from Section A of the State School Fund and funds provided by subdivision (c) of Section 14002, or provided by any other provision of law in lieu of those sections, shall be used to restore any reductions in apportionments to elementary, high, and unified school districts and county superintendents of schools as follows:

(a) First, for revenue limits computed pursuant to Sections 2558 and 42238.

(b) Second, for special education computed pursuant to Chapter 7.2 (commencing with Section 56836) of Part 30.

(c) Third, for home-to-school transportation computed pursuant to Section 41856 or, commencing with the 1984–85 fiscal year, Article 10 (commencing with Section 41850) of Chapter 8.

Any remaining balances otherwise transferable under subdivisions (b) and (c) of Section 14002 shall revert to the General Fund.

SEC. 13. Section 42129 of the Education Code is amended to read:

42129. School districts and county offices of education shall transmit to the State Department of Education, on a timely basis, all budget reports, prior year expenditure reports, qualified and negative financial status reports, program cost accounting reports, certifications, and audit reports as prescribed by subdivision (j) of Section 1240, subdivision (g) of Section 35035, Sections 1621, 1623, 35014, 41020, 42127, and Chapter 7.2 (commencing with Section 56836) of Part 30, and those reports used to calculate the first, second, and annual principal apportionments and special purpose apportionments for school districts and county offices of education. In the event that the reports are not submitted to the Superintendent of Public Instruction within 14 days after the submission date

prescribed in the statute or specified by the Superintendent of Public Instruction, the Superintendent of Public Instruction may direct the county auditor to withhold payment of any stipend, expenses, or salaries to the district superintendent, county superintendent, or members of the governing boards, as appropriate. The withholding shall continue only until the delinquent reports have been submitted to the State Department of Education. If the county superintendent performs the functions of the county auditor, the Superintendent of Public Instruction may direct the county superintendent to withhold the payments specified in this section.

SEC. 13.5. Section 42238.95 is added to the Education Code, to read:

42238.95. (a) The amount per unit of average daily attendance for pupils in special classes and centers that shall be apportioned to each county office of education shall be equal to the amount determined for the district of residence pursuant to Section 42238.9, increased by the quotient equal to the amount determined pursuant to subdivision (b) divided by the amount determined pursuant to subdivision (c). This subdivision shall only apply to average daily attendance served by employees of the county office of education.

(b) Determine the second principal apportionment average daily attendance for special education for the county office of education for the 1996–97 fiscal year, including attendance for excused absences, divided by the corresponding average daily attendance excluding attendance for excused absences pursuant to subdivision (b) of 46010 as it read on July 1, 1996, reported pursuant to Section 41601 for the 1996–97 fiscal year.

(c) Determine the second principal apportionment average daily attendance for the 1996–97 fiscal year, including attendance for excused absences, for all of the school districts within the county, excluding average daily attendance for county office special education and county community school programs and nonpublic nonsectarian schools, divided by the corresponding average daily attendance excluding attendance for excused absences pursuant to subdivision (b) of Section 46010 as it read on July 1, 1996, and reported pursuant to Section 41601 for the 1996–97 fiscal year.

(d) A county office of education shall provide the data required to perform the calculation specified in subdivision (b) to the Superintendent of Public Instruction in order to be eligible for the adjustment pursuant to subdivision (a).

SEC. 14. Section 46200.5 of the Education Code is amended to read:

46200.5. (a) In the 1985–86 fiscal year, for each county office of education that certifies to the Superintendent of Public Instruction that it offers 180 days or more of instruction per school year of special day classes pursuant to Section 56364 or Section 56346.2, as applicable, the Superintendent of Public Instruction shall determine an amount equal to seventy dollars ($70) per unit of current year second

principal apportionment average daily attendance for special day classes. This computation shall be included in computations made by the superintendent pursuant to Chapter 7.2 (commencing with Section 56836) of Part 30.

(b) For any county office of education that received an apportionment pursuant to subdivision (a), that offers less than 180 days of instruction in the 1986–87 year or any fiscal year thereafter, and that does not provide the minimum number of instructional minutes specified in subdivision (a) of Section 46201.5 for that fiscal year, the Superintendent of Public Instruction shall reduce the special education apportionment per unit of average daily attendance for that fiscal year by an amount attributable to the increase received pursuant to subdivision (a), as adjusted in fiscal years subsequent to the 1985–86 fiscal year.

SEC. 15. Section 46201.5 of the Education Code is amended to read:

46201.5. (a) In each of the 1985–86 and 1986–87 fiscal years, for each county office of education that certifies to the Superintendent of Public Instruction that, for special day classes pursuant to Section 56364 or Section 56346.2, as applicable, it offers at least the amount of instructional time specified in this subdivision, the Superintendent of Public Instruction shall determine an amount equal to eighty dollars ($80) in the 1985–86 fiscal year and forty dollars ($40) in the 1986–87 fiscal year per unit of current year second principal apportionment average daily attendance for special day classes in kindergarten and grades 1 to 8, inclusive, and one hundred sixty dollars ($160) in the 1985–86 fiscal year and eighty dollars ($80) in the 1986–87 fiscal year per unit of current year second principal apportionment average daily attendance for special day classes in grades 9 to 12, inclusive.

This computation shall be included in computations made by the superintendent pursuant to Article 2 (commencing with Section 56836.06) of Chapter 7.2 of Part 30.

(1) In the 1985–86 fiscal year:

(A) 34,500 minutes in kindergarten.

(B) 47,016 minutes in grades 1 to 3, inclusive.

(C) 50,000 minutes in grades 4 to 8, inclusive.

(D) 57,200 minutes in grades 9 to 12, inclusive.

(2) In the 1986–87 fiscal year:

(A) 36,000 minutes in kindergarten.

(B) 50,400 minutes in grades 1 to 3, inclusive.

(C) 54,000 minutes in grades 4 to 8, inclusive.

(D) 64,800 minutes in grades 9 to 12, inclusive.

(b) Each county office of education that receives an apportionment pursuant to subdivision (a) in a fiscal year shall, in the subsequent fiscal year, add the amount received per pupil to the county office's base special education apportionment.

(c) For each county office of education that receives an apportionment pursuant to subdivision (a) in the 1985–86 fiscal year, and that reduces the amount of instructional time offered below the minimum amounts specified in paragraph (1) of subdivision (a) in the 1986–87 fiscal year, or any fiscal year thereafter, the Superintendent of Public Instruction shall reduce the special education apportionment for the fiscal year in which the reduction occurs by an amount attributable to the increase in the 1986–87 fiscal year special education apportionment pursuant to subdivision (b), as adjusted in the 1986–87 fiscal year and fiscal years thereafter.

For each county office of education that receives an apportionment pursuant to subdivision (a) in the 1986–87 fiscal year, and that reduces the amount of instructional time offered below the minimum amounts specified in paragraph (2) of subdivision (a) in the 1987–88 fiscal year, or any fiscal year thereafter, the superintendent shall reduce the special education apportionment for the fiscal year in which the reduction occurs by an amount attributable to the increase in the 1987–88 fiscal year special education apportionment pursuant to subdivision (b), as adjusted in the 1987–88 fiscal year and fiscal years thereafter.

SEC. 16. Section 54732 of the Education Code is amended to read:

54732. If a school district and school choose to include with programs operated pursuant to this article funds allocated pursuant to Chapter 7.2 (commencing with Section 56836) of Part 30, the school district shall continue to meet the requirements provided for in the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.).

SEC. 17. Section 56048 is added to the Education Code, to read:

56048. The superintendent shall review the information and calculations submitted by special education local plan areas in support of all apportionment computations described in this part. The review shall be conducted on the data submitted during the initial year of apportionment and for the first succeeding fiscal year only. Adjustments to any year's apportionment shall be received by the superintendent from the special education local plan area prior to the end of the first fiscal year following the fiscal year to be adjusted. The superintendent shall consider and adjust only the information and computational factors originally established during an eligible fiscal year, if the superintendent's review determines that they are correct.

SEC. 18. Section 56131 of the Education Code is amended to read:

56131. The superintendent shall apportion funds in accordance with Chapter 7.2 (commencing with Section 56836) and approved local plans.

SEC. 19. Section 56132 of the Education Code is amended to read:

56132. The superintendent shall assist districts, county offices, and special education local plan areas in the improvement and evaluation of their programs.

SEC. 20. Section 56136 of the Education Code is amended to read:

56136. The superintendent shall develop guidelines for each low incidence disability area and provide technical assistance to parents, teachers, and administrators regarding the implementation of the guidelines. The guidelines shall clarify the identification, assessment, planning of, and the provision of, specialized services to pupils with low incidence disabilities. The superintendent shall consider the guidelines when monitoring programs serving pupils with low incidence disabilities pursuant to subdivision (a) of Section 56836.04. The adopted guidelines shall be promulgated for the purpose of establishing recommended guidelines and shall not operate to impose minimum state requirements.

SEC. 21. 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 that is licensed by the state, or other public agency having 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" 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 3 (commencing with Section 56836.16) of Chapter 7.2, 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 (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 programs provided pursuant to Section 56150.

(4) Any other public agency.

(b) As used in this article, "foster family home" means a family residence that is licensed by the state, or other public agency having 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" includes a small family home as defined in paragraph (6) of subdivision (a) of Section 1502 of the Health and Safety Code.

SEC. 22. Section 56156.4 is added to the Education Code, to read:

56156.4. (a) Each special education local plan area shall be responsible for providing appropriate education to individuals with exceptional needs residing in licensed children's institutions and foster family homes located in the geographical area covered by the local plan.

(b) In multidistrict and district and county office local plan areas, local written agreements shall be developed, pursuant to subdivision

(f) of Section 56195.7, to identify the public education entities that will provide the special education services.

(c) If there is no local agreement, special education services for individuals with exceptional needs residing in licensed children's institutions shall be the responsibility of the county office in the county in which the institution is located, if the county office is part of the special education local plan area, and special education services for individuals with exceptional needs residing in foster family homes shall be the responsibility of the district in which the foster family home is located. If a county office is not a part of the special education local plan area, special education services for individuals with exceptional needs residing in licensed children's institutions, pursuant to this subdivision, shall be the responsibility of the responsible local agency or other administrative entity of the special education local plan area. This program responsibility shall continue until the time local written agreements are developed pursuant to subdivision (f) of Section 56195.7.

(d) This section shall apply to special education local plan areas that are submitting a revised local plan for approval pursuant to Section 56836.03 or that have an approved revised local plan pursuant to Section 56836.03.

SEC. 23. Section 56156.5 of the Education Code is amended to read:

56156.5. (a) Each district, special education local plan area, or county office shall be responsible for providing appropriate education to individuals with exceptional needs residing in licensed children's institutions and foster family homes located in the geographical area covered by the local plan.

(b) In multidistrict and district and county office local plan areas, local written agreements shall be developed, pursuant to subdivision (f) of Section 56195.7, to identify the public education entities that will provide the special education services.

(c) If there is no local agreement, special education services for individuals with exceptional needs residing in licensed children's institutions shall be the responsibility of the county office in the county in which the institution is located, if the county office is part of the special education local plan area, and special education services for individuals with exceptional needs residing in foster family homes shall be the responsibility of the district in which the foster family home is located. If a county office is not a part of the special education local plan area, special education services for individuals with exceptional needs residing in licensed children's institutions, pursuant to this subdivision, shall be the responsibility of the responsible local agency or other administrative entity of the special education local plan area. This program responsibility shall continue until the time local written agreements are developed pursuant to subdivision (f) of Section 56195.7.

(d) This section shall not apply to any special education local plan area that has a revised local plan approved pursuant to Section 56836.03. This section shall apply to special education local plan areas that have not had a revised local plan approved pursuant to that section.

(e) This section shall become inoperative on July 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2004, deletes or extends the date on which it becomes inoperative and is repealed.

SEC. 24. Section 56156.6 of the Education Code is amended to read:

56156.6. If the district in which the licensed children's institution or foster family home is located is also the district of residence of the parent of the individual with exceptional needs, and if the parent retains legal responsibility for the child's education, Sections 56836.16 and 56836.17 shall not apply.

SEC. 25. Section 56160 of the Education Code is repealed.

SEC. 26. Section 56161 of the Education Code is repealed.

SEC. 27. Section 56169 of the Education Code is repealed.

SEC. 28. Section 56195.7 of the Education Code is amended to read:

56195.7. In addition to the provisions required to be included in the local plan pursuant to Chapter 3 (commencing with Section 56200), each special education local plan area that submits a local plan pursuant to subdivision (b) of Section 56195.1 and each county office that submits a local plan pursuant to subdivision (c) of Section 56195.1 shall develop written agreements to be entered into by entities participating in the plan. The agreements need not be submitted to the superintendent. These agreements shall include, but not be limited to, the following:

(a) A coordinated identification, referral, and placement system pursuant to Chapter 4 (commencing with Section 56300).

(b) Procedural safeguards pursuant to Chapter 5 (commencing with Section 56500).

(c) Regionalized services to local programs, including, but not limited to, all of the following:

(1) Program specialist service pursuant to Section 56368.

(2) Personnel development, including training for staff, parents, and members of the community advisory committee pursuant to Article 3 (commencing with Section 56240).

(3) Evaluation pursuant to Chapter 6 (commencing with Section 56600).

(4) Data collection and development of management information systems.

(5) Curriculum development.

(6) Provision for ongoing review of programs conducted, and procedures utilized, under the local plan, and a mechanism for correcting any identified problem.

(d) A description of the process for coordinating services with other local public agencies that are funded to serve individuals with exceptional needs.

(e) A description of the process for coordinating and providing services to individuals with exceptional needs placed in public hospitals, proprietary hospitals, and other residential medical facilities pursuant to Article 5.5 (commencing with Section 56167) of Chapter 2.

(f) A description of the process for coordinating and providing services to individuals with exceptional needs placed in licensed children's institutions and foster family homes pursuant to Article 5 (commencing with Section 56155) of Chapter 2.

(g) A description of the process for coordinating and providing services to individuals with exceptional needs placed in juvenile court schools or county community schools pursuant to Section 56150.

(h) A budget for special education and related services that shall be maintained by the special education local plan area and be open to the public covering the entities providing programs or services within the special education local plan area. The budget language shall be presented in a form that is understandable by the general public. For each local educational agency or other entity providing a program or service, the budget, at minimum, shall display the following:

(1) Expenditures by object code and classification for the previous fiscal year and the budget by the same object code classification for the current fiscal year.

(2) The number and type of certificated instructional and support personnel, including the type of class setting to which they are assigned, if appropriate.

(3) The number of instructional aides and other qualified classified personnel.

(4) The number of enrolled individuals with exceptional needs receiving each type of service provided.

(i) For multidistrict special education local plan areas, a description of the policymaking process that shall include a description of the local method used to distribute state and federal funds among the local educational agencies in the special education local plan area. The local method to distribute funds shall be approved according to the policymaking process established consistent with subdivision (f) of Section 56001 and pursuant to paragraph (3) of subdivision (b) of Section 56205 or subdivision (c) of Section 56200, whichever is appropriate.

SEC. 29. Section 56195.10 is added to the Education Code, to read:

56195.10. Unless the process described in subdivision (i) of Section 56195.7 specifies an alternative method of distribution of state and local funds among the participating local educational agencies, the funds shall be distributed by the special education local plan area as allocated instructional personnel service units and operated as

computed in Chapter 7 (commencing with Section 56700) as that chapter existed on December 31, 1998, or Chapter 7.1 (commencing with Section 56835).

SEC. 30. Section 56200 of the Education Code is amended to read:

56200. Each local plan submitted to the superintendent under this part shall contain all the following:

(a) Compliance assurances, including general compliance 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 this part.

(b) A description of services to be provided by each district and county office. This description shall demonstrate that all individuals with exceptional needs shall have access to services and instruction appropriate to meet their needs as specified in their individualized education programs.

(c) (1) A description of the governance and administration of the plan, including the role of county office and district governing board members.

(2) Multidistrict plans, submitted pursuant to subdivision (b) or (c) of Section 56195.1, shall specify the responsibilities of each participating county office and district governing board in the policymaking process, the responsibilities of the superintendents of each participating district and county in the implementation of the plan, and the responsibilities of district and county administrators of special education in coordinating the administration of the local plan.

(d) Copies of joint powers agreements or contractual agreements, as appropriate, for districts and counties that elect to enter into those agreements pursuant to subdivision (b) or (c) of Section 56170.

(e) An annual budget plan to allocate instructional personnel service units, support services, and transportation services directly to entities operating those services and to allocate regionalized services funds to the county office, responsible local agency, or other alternative administrative structure. The annual budget plan shall be adopted at a public hearing held by the district, special education local plan area, or county office, as appropriate. Notice of this hearing shall be posted in each school in the local plan area at least 15 days prior to the hearing. The annual budget plan may be revised during the fiscal year, and these revisions may be submitted to the superintendent as amendments to the allocations set forth in the plan. However, the revisions shall, prior to submission to the superintendent, be approved according to the policymaking process, established pursuant to paragraph (2) of subdivision (c).

(f) Verification that the plan has been reviewed by the community advisory committee and that the committee had at least 30 days to conduct this review prior to submission of the plan to the superintendent.

(g) A description of the identification, referral, assessment, instructional planning, implementation, and review in compliance with Chapter 4 (commencing with Section 56300).

(h) A description of the process being utilized to meet the requirements of Section 56303.

(i) A description of the process being utilized to meet the requirements of the California Early Intervention Services Act, Title 14 (commencing with Section 95000) of the Government Code.

SEC. 31. Section 56205 of the Education Code is amended to read:

56205. Each special education local plan area shall submit a local plan to the superintendent under this part. The local plan shall contain all the following:

(a) Compliance assurances, including general compliance 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), the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), federal regulations relating thereto, and this part.

(b) (1) A description of the governance and administration of the plan, including identification of the governing body of a multidistrict plan or the individual responsible for administration in a single district plan, and a description of the elected officials to whom the governing body or individual is responsible.

(2) A description of the regionalized operations and services listed in Section 56836.23 and the direct instructional support provided by program specialists in accordance with Section 56368 to be provided through the plan.

(3) Multidistrict plans, submitted pursuant to subdivision (b) or (c) of Section 56195.1, shall specify the responsibilities of each participating county office and district governing board in the policymaking process, the responsibilities of the superintendents of each participating district and county in the implementation of the plan, and the responsibilities of district and county administrators of special education in coordinating the administration of the local plan.

(4) Multidistrict plans, submitted pursuant to subdivision (b) or (c) of Section 56195.1, shall identify the respective roles of the administrative unit and the administrator of the special education local plan area and the individual local education agencies within the special education local plan area in relation to the following:

(A) The hiring, supervision, evaluation, and discipline of the administrator of the special education local plan area and staff employed by the administrative unit in support of the local plan.

(B) The allocation from the state of federal and state funds to the special education local plan area administrative unit or to local education agencies within the special education local plan area.

(C) The operation of special education programs.

(D) Monitoring the appropriate use of federal, state, and local funds allocated for special education programs.

(E) The preparation of program and fiscal reports required of the special education local plan area by the state.

(5) The description of the governance and administration of the plan, and the policymaking process, shall be consistent with subdivision (f) of Section 56001, subdivision (a) of Section 56195.3, and Section 56195.9 and shall reflect a schedule of regular consultations regarding policy and budget development with representatives of special and regular teachers and administrators selected by the groups they represent and parent members of the community advisory committee established pursuant to Article 7 (commencing with Section 56190) of Chapter 2.

(c) A description of the method by which members of the public, including parents or guardians of individuals with exceptional needs who are receiving services under the plan, may address questions or concerns to the governing body or individual identified in paragraph (1) of subdivision (b).

(d) A description of an alternative dispute resolution process, including mediation and final and binding arbitration to resolve disputes over the distribution of funding, the responsibility for service provision, and other activities specified within the plan. Any arbitration shall be conducted by the department.

(e) Copies of joint powers agreements or contractual agreements, as appropriate, for districts and counties that elect to enter into those agreements pursuant to subdivision (b) or (c) of Section 56195.1.

(f) An annual budget plan that shall be adopted at a public hearing held by the special education local plan area. Notice of this hearing shall be posted in each school in the local plan area at least 15 days prior to the hearing. The annual budget plan may be revised during any fiscal year according to the policymaking process established pursuant to paragraphs (3) and (5) of subdivision (b) and consistent with subdivision (f) of Section 56001 and Section 56195.9. The annual budget plan shall identify expected expenditures for all items required by this part which shall include, but not be limited to, the following:

(1) Funds received in accordance with Chapter 7.2 (commencing with Section 56836).

(2) Administrative costs of the plan.

(3) Special education services to pupils with severe disabilities and low incidence disabilities.

(4) Special education services to pupils with nonsevere disabilities.

(5) Supplemental aids and services to meet the individual needs of pupils placed in regular education classrooms and environments.

(6) Regionalized operations and services, and direct instructional support by program specialists in accordance with Article 6 (commencing with Section 56836.23) of Chapter 7.2.

(7) The use of property taxes allocated to the special education local plan area pursuant to Section 2572.

(g) An annual service plan shall be adopted at a public hearing held by the special education local plan area. Notice of this hearing shall be posted in each school in the special education local plan area at least 15 days prior to the hearing. The annual service plan may be revised during any fiscal year according to the policymaking process established pursuant to paragraphs (3) and (5) of subdivision (b) and consistent with subdivision (f) of Section 56001 and Section 56195.9. The annual service plan shall include a description of services to be provided by each district and county office, including the nature of the services and the location at which the services will be provided, including alternative schools, charter schools, opportunity schools and classes, community day schools operated by school districts, community schools operated by county offices of education, and juvenile court schools regardless of whether the district or county office of education is participating in the local plan. This description shall demonstrate that all individuals with exceptional needs shall have access to services and instruction appropriate to meet their needs as specified in their individualized education programs.

(h) Verification that the plan has been reviewed by the community advisory committee and that the committee had at least 30 days to conduct this review prior to submission of the plan to the superintendent.

(i) A description of the identification, referral, assessment, instructional planning, implementation, and review in compliance with Chapter 4 (commencing with Section 56300).

(j) A description of the process being utilized to meet the requirements of Section 56303.

(k) A description of the process being utilized to meet the requirements of the California Early Intervention Services Act, Title 14 (commencing with Section 95000) of the Government Code.

(*l*) The local plan, budget plan, and annual service plan shall be written in language that is understandable to the general public.

SEC. 32. Section 56207 of the Education Code is amended to read:

56207. (a) No educational programs and services already in operation in school districts or a county office of education pursuant to Part 30 (commencing with Section 56000) shall be transferred to another school district or a county office of education or from a county office of education to a school district unless the special education local plan area has developed a plan for the transfer which addresses, at a minimum, all of the following:

(1) Pupil needs.

(2) The availability of the full continuum of services to affected pupils.

(3) The functional continuation of the current individualized education programs of all affected pupils.

(4) The provision of services in the least restrictive environment from which affected pupils can benefit.

(5) The maintenance of all appropriate support services.

(6) The assurance that there will be compliance with all federal and state laws and regulations and special education local plan area policies.

(7) The means through which parents and staff were represented in the planning process.

(b) The date on which the transfer will take effect may be no earlier than the first day of the second fiscal year beginning after the date on which the sending or receiving agency has informed the other agency and the governing body or individual identified in paragraph (1) of subdivision (b) of Section 56205, unless the governing body or individual identified in paragraph (1) of subdivision (b) of Section 56205 unanimously approves the transfer taking effect on the first day of the first fiscal year following that date.

(c) If either the sending or receiving agency disagree with the proposed transfer, the matter shall be resolved by the alternative resolution process established pursuant to subdivision (d) of Section 56205.

(d) Notwithstanding Section 56208, this section shall apply to all special education local plan areas commencing on July 1, 1998, whether or not a special education local plan area has submitted a revised local plan for approval or has an approved revised local plan pursuant to Section 56836.03.

SEC. 33. Section 56211 of the Education Code is amended to read:

56211. A special education local plan area submitting a local plan, pursuant to subdivision (c) of Section 56195.1, which includes all of the school districts located in the county or counties submitting the plan, except those participating in a countywide special education local plan area located in an adjacent county, and which meets the criteria for special education local plan areas with small populations set forth in Section 56212, is eligible to request that designation in its local plan application.

This section shall become operative on July 1, 1998.

SEC. 34. Section 56212 of the Education Code is amended to read:

56212. An eligible special education local plan area, which submits a local plan under the provisions of Section 56211, may request designation as a necessary small special education local plan area if its total reported units of average daily attendance in kindergarten and grades 1 to 12, inclusive, is less than 15,000, and if it includes all of the school districts located in the county or counties participating in the local plan, except those districts participating in a countywide special education local plan area located in an adjacent county that also meets the criteria of this section.

This section shall become operative on July 1, 1998.

SEC. 35. Section 56325 of the Education Code is amended to read:

56325. (a) Whenever a pupil transfers into a school district from a school district not operating programs under the same local plan in which he or she was last enrolled in a special education program, the administrator of a local program under this part shall ensure that the

pupil is immediately provided an interim placement for a period not to exceed 30 days. The interim placement must be in conformity with an individualized education program, unless the parent or guardian agrees otherwise. The individualized education program implemented during the interim placement may be either the pupil's existing individualized education program, implemented to the extent possible within existing resources, which may be implemented without complying with subdivision (a) of Section 56321, or a new individualized education program developed pursuant to Section 56321.

(b) Before the expiration of the 30-day period, the interim placement shall be reviewed by the individualized education program team and a final recommendation shall be made by the team in accordance with the requirements of this chapter. The team may utilize information, records, and reports from the school district or county program from which the pupil transferred.

(c) Commencing on July 1, 1998, whenever a pupil described in subdivision (a) was placed and residing in a residential nonpublic, nonsectarian school, prior to transferring to a school district in another special education local plan area, and this placement is not eligible for funding pursuant to Section 56836.16, the special education local plan area that contains the district that made the residential nonpublic, nonsectarian school placement shall continue to be responsible for the funding of the placement, including related services, for the remainder of the school year. An extended year session is included in the school year in which the session ends.

SEC. 36. Section 56361 of the Education Code is amended to read:

56361. The continuum of program options shall include, but not necessarily be limited to, all of the following or any combination of the following:

(a) Regular education programs consistent with subparagraph (B) of paragraph (5) of Section 1412 and clause (iv) of subparagraph (C) of paragraph (1) of subsection (a) of Section 1414 of Title 20 of the United States Code and implementing regulations.

(b) A resource specialist program pursuant to Section 56362.

(c) Designated instruction and services pursuant to Section 56363.

(d) Special classes and centers pursuant to Section 56364 or Section 56346.2, as applicable.

(e) Nonpublic, nonsectarian school services pursuant to Section 56365.

(f) State special schools pursuant to Section 56367.

(g) Instruction in settings other than classrooms where specially designed instruction may occur.

(h) Itinerant instruction in classrooms, resource rooms, and settings other than classrooms where specially designed instruction may occur to the extent required by federal law or regulation.

(i) Instruction using telecommunication, and instruction in the home, in hospitals, and in other institutions to the extent required by federal law or regulation.

SEC. 37. Section 56364.1 of the Education Code is amended to read:

56364.1. Notwithstanding the provisions of Section 56364 or Section 56346.2, as applicable, pupils with low incidence disabilities may receive all or a portion of their instruction in the regular classroom and may also be enrolled in special classes taught by appropriately credentialed teachers who serve these pupils at one or more schoolsites. The instruction shall be provided in a manner which is consistent with the guidelines adopted pursuant to Section 56136 and in accordance with the individualized education program.

SEC. 38. 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 7.2 (commencing with Section 56836) 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 7.2 (commencing with Section 56836) 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, the district, special education local plan area, or county office shall document its efforts to utilize public schools or to locate an appropriate nonpublic, nonsectarian school or agency program, or both, within the state.

(f) If a district, special education local plan area, or county office places a pupil with a nonpublic, nonsectarian school or agency outside of this state, the pupil's individualized education program team shall submit a report to the superintendent within 15 days of the placement decision. The report 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, 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 superintendent shall submit a report to the State Board of Education on all placements made outside of this state.

(g) If a school district, special education local plan area, or county office of education decides to place a pupil with a nonpublic, nonsectarian school or agency outside of this state, that local education agency 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.

(h) 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 and designated instruction and related services to pupils under the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.).

(i) A nonpublic, nonsectarian school or agency that is located outside of this state is eligible for certification pursuant to Section 56366.1 only if a pupil is enrolled in a program operated by that school or agency pursuant to the recommendation of an individualized education program team in California, and if that pupil's parents or guardians reside in California.

SEC. 39. 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 master contract for nonpublic, nonsectarian school or agency services shall be developed in accordance with the following provisions:

(1) The master 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. 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 master contract shall include an individual services agreement 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 master 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 master 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 or individualized services agreement.

(5) Related services provided pursuant to a nonpublic, nonsectarian agency master 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.

(b) The master 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 tuition 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 master 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) No master 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 for a period no longer than four years from the date of the approval.

(e) By September 30, 1998, the procedures, methods, and regulations for the purposes of contracting for nonpublic, nonsectarian school and agency services pursuant to this section and for reimbursement pursuant to Sections 56836.16 and 56836.20 shall be developed by the superintendent in consultation with statewide organizations representing providers of special education and designated instruction and services. The regulations shall be established by rules and regulations issued by the board.

SEC. 40. Section 56366.3 of the Education Code is amended to read:

56366.3. (a) No contract for special education and related services provided by a nonpublic, nonsectarian school or agency shall be reimbursed by the state pursuant to Article 4 (commencing with Section 56836.20) of Chapter 7.2 and Section 56836.16 if the contract covers special education and related services, administration, or supervision by an individual who was an employee of a contracting district, special education local plan area, or county office within the last 365 days, unless the contract contains an addendum establishing that the individual was involuntarily terminated or laid off as part of necessary staff reductions from the district, special education local plan area, or county office.

(b) This section does not apply to any person who is able to provide designated instruction and services during the extended school year because he or she is otherwise employed for up to 10 months of the school year by the district, special education local plan area, or county office.

SEC. 41. Section 56441.10 of the Education Code is repealed.

SEC. 42. Section 56446 of the Education Code is amended to read:

56446. Public special education funding shall not be used to purchase regular preschool services or to purchase any instructional service other than special education and services permitted by this chapter.

SEC. 43. Section 56447 of the Education Code is repealed.

SEC. 44. Section 56832 of the Education Code is amended to read:

56832. (a) This chapter shall become inoperative on July 1, 1998, and, as of January 1, 1999, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

(b) Notwithstanding subdivision (a), this chapter, as it existed on December 31, 1998, shall apply until June 30, 1999, for the purpose of submitting corrections to amounts funded under this chapter, and until June 30, 2000, for the purpose of certifications of amounts funded under this chapter.

SEC. 45. Section 56835.04 of the Education Code is amended to read:

56835.04. (a) The data certified by the State Department of Education to the Controller for the 1995–96 fiscal year with respect to apportionments computed under Chapter 7 (commencing with Section 56700), excluding data for services to individuals with exceptional needs younger than three years of age, shall be used for the purposes of making computations based upon the 1995–96 fiscal year pursuant to this chapter.

(b) For purposes of this chapter, information reported "for the 1995–96 annual apportionment" means the data meeting the requirements of subdivision (a), as certified in March 1997.

SEC. 46. Section 56836.01 of the Education Code is amended to read:

56836.01. Commencing with the 1998–99 fiscal year and each fiscal year thereafter, the administrator of each special education local plan area, in accordance with the local plan approved by the board, shall be responsible for the following:

(a) The fiscal administration of the annual budget plan pursuant to subdivision (f) of Section 56205 and annual allocation plan for multidistrict special education local plan areas pursuant to Section 56836.05 for special education programs of school districts and county superintendents of schools composing the special education local plan area.

(b) The allocation of state and federal funds allocated to the special education local plan area for the provision of special education and related services by those entities.

(c) The reporting and accounting requirements prescribed by this part.

SEC. 47. Section 56836.02 of the Education Code is amended to read:

56836.02. (a) The superintendent shall apportion funds from Section A of the State School Fund to districts and county offices of education in accordance with the allocation plan adopted pursuant to Section 56836.05, unless the allocation plan specifies that funds be apportioned to the administrative unit of the special education local plan area. If the allocation plan specifies that funds be apportioned to the administrative unit of the special education local plan area, the administrator of the special education local plan area shall, upon receipt, distribute the funds in accordance with the method adopted pursuant to subdivision (i) of Section 56195.7. The allocation plan shall, prior to submission to the superintendent, be approved according to the local policymaking process established by the special education local plan area.

(b) The superintendent shall apportion funds for regionalized services and program specialists from Section A of the State School Fund to the administrative unit of each special education local plan area. Upon receipt, the administrator of a special education local plan area shall direct the administrative unit of the special education local

plan area to distribute the funds in accordance with the allocation plan adopted pursuant to subdivision (f) of Section 56205.

SEC. 48. Section 56836.03 of the Education Code is amended to read:

56836.03. (a) On or after January 1, 1998, each special education local plan area shall submit a revised local plan. Each special education local plan area shall submit its revised local plan not later than the time it is required to submit its local plan pursuant to subdivision (b) of Section 56100 and the revised local plan shall meet the requirements of Chapter 3 (commencing with Section 56200).

(b) Until the board has approved the revised local plan and the special education local plan area begins to operate under the revised local plan, each special education local plan area shall continue to operate under the programmatic, reporting, and accounting requirements prescribed by the State Department of Education for the purposes of Chapter 7 (commencing with Section 56700) as that chapter existed on December 31, 1998. The department shall develop transition guidelines, and, as necessary, transition forms, to facilitate a transition from the reporting and accounting methods required for Chapter 7 (commencing with Section 56700) as that chapter existed on December 31, 1998, and related provisions of this part, to the reporting and accounting methods required for this chapter. Under no circumstances shall the transition guidelines exceed the requirements of the provisions described in paragraphs (1) and (2). The transition guidelines shall, at a minimum, do the following:

(1) Describe the method for accounting for the instructional service personnel units and caseloads, as required by Chapter 7 (commencing with Section 56700) as that chapter existed on December 31, 1998.

(2) Describe the accounting that is required to be made, if any, for the purposes of Sections 56030, 56140, 56156.4, 56156.5, 56361.5, 56362, 56363.3, 56366.2, 56366.3, 56370, 56441.5, and 56441.7.

(c) Commencing with the 1997–98 fiscal year, through and including the fiscal year in which equalization among special education local plan areas has been achieved, the board shall not approve any proposal to divide a special education local plan area into two or more units, unless the division has no net impact on state costs for special education; provided, however, that the board may approve a proposal that was initially submitted to the department prior to January 1, 1997.

SEC. 49. Section 56836.05 of the Education Code is amended to read:

56836.05. (a) Apportionments made under this part shall be made by the superintendent as early as practicable in the fiscal year. Upon order of the superintendent, the Controller shall draw warrants upon the money appropriated, in favor of the eligible special education local plan areas.

(b) If the special education local plan area is a multidistrict special education local plan area, and the approved allocation plan does not specify that funds will be apportioned to the special education local plan area administrative unit, the special education local plan area shall submit to the superintendent an annual allocation plan to allocate funds received in accordance with this chapter among the local educational agencies within the special education local plan area. The annual allocation plan may be revised during any fiscal year, and these revisions may be submitted to the superintendent as amendments. The amendments shall, prior to submission to the superintendent, be approved according to the policymaking process established by the special education local plan area.

(c) If funds are apportioned to a special education local plan area administrative unit in the 1998–99 fiscal year and the special education local plan area administrative unit is changed in the 1998–99 fiscal year or thereafter, monthly payments shall be made according to the schedule in paragraph (2) of subdivision (a) of Section 14041 unless all local educational agencies are on the same schedule. If all local educational agencies are on the same schedule, the appropriate schedule in paragraph (2), (7), or (8) of subdivision (a) of Section 14041 shall apply.

SEC. 50. Section 56836.06 of the Education Code is amended to read:

56836.06. For the purposes of this article, the following terms or phrases shall have the following meanings, unless the context clearly requires otherwise:

(a) "Average daily attendance reported for the special education local plan area" means the total of the following:

(1) The total number of units of average daily attendance reported for the second principal apportionment pursuant to Section 41601 for all pupils enrolled in the district or districts that are a part of the special education local plan area.

(2) The total number of units of average daily attendance reported pursuant to subdivisions (a) and (b) of Section 41601 for all pupils enrolled in schools operated by the county office or offices that compose the special education local plan area, or for those county offices that are a part of more than one special education local plan area, that portion of the average daily attendance of pupils enrolled in the schools operated by the county office that are under the jurisdiction of the special education local plan area.

(b) For the purposes of computing apportionments pursuant to this chapter for the special education local plan area identified as the Los Angeles County Juvenile Court and Community School/Division of Alternative Education Special Education Local Plan Area, the term "average daily attendance" shall mean the total number of units of average daily attendance reported for the second principal apportionment pursuant to subdivisions (a) and (b) of Section 41601 for all pupils enrolled in districts within Los Angeles County and all

schools operated by the Los Angeles County Office of Education and the districts within Los Angeles County.

(c) "Special education local plan area" includes the school district or districts and county office or offices of education composing the special education local plan area.

(d) "The fiscal year in which equalization among special education local plan areas has been achieved" means the first fiscal year in which each special education local plan area is funded at or above the statewide target amount per unit of average daily attendance, as computed pursuant to Section 56836.11.

SEC. 51. Section 56836.08 of the Education Code is amended to read:

56836.08. (a) For the 1998–99 fiscal year, the superintendent shall make the following computations to determine the amount of funding for each special education local plan area:

(1) Add the amount of funding per unit of average daily attendance computed for the special education local plan area pursuant to paragraph (1) of subdivision (a) of Section 56836.10 to the inflation adjustment computed pursuant to subdivision (d) for the 1998–99 fiscal year.

(2) Multiply the amount computed in paragraph (1) by the units of average daily attendance reported for the special education local plan area for the 1997–98 fiscal year.

(3) Add the actual amount of the equalization adjustment, if any, computed for the 1998–99 fiscal year pursuant to Section 56836.14 to the amount computed in paragraph (2).

(4) Add or subtract, as appropriate, the adjustment for growth computed pursuant to Section 56836.15 from the amount computed in paragraph (3).

(5) Add the special disabilities adjustment computed pursuant to Article 2.5 (commencing with Section 56836.155). The special disabilities adjustment received in the 1998–99 fiscal year shall not be included in the calculations made pursuant to paragraph (1) of subdivision (b) of Section 56836.10 for the 1999–2000 fiscal year.

(b) For the 1999–2000 fiscal year and each fiscal year thereafter, the superintendent shall make the following computations to determine the amount of funding for each special education local plan area for the fiscal year in which the computation is made:

(1) Add the amount of funding per unit of average daily attendance computed for the special education local plan area for the prior fiscal year pursuant to Section 56836.10 to the inflation adjustment computed pursuant to subdivision (d) for the fiscal year in which the computation is made.

(2) Multiply the amount computed in paragraph (1) by the units of average daily attendance reported for the special education local plan area for the prior fiscal year.

(3) Add the actual amount of the equalization adjustment, if any, computed for the special education local plan area for the fiscal year

in which the computation is made pursuant to Section 56836.14 to the amount computed in paragraph (2).

(4) Add or subtract, as appropriate, the adjustment for growth or decline in enrollment, if any, computed for the special education local plan area for the fiscal year in which the computation is made pursuant to Section 56836.15 from the amount computed in paragraph (3).

(5) Add the special disabilities adjustment computed pursuant to Article 2.5 (commencing with Section 56836.155) and increased pursuant to subparagraph (D) if the adjusted funding per unit of average daily attendance of the special education local plan area is below the statewide target amount per unit of average daily attendance as determined pursuant to subparagraphs (A) to (C), inclusive, as follows:

(A) Calculate the adjusted amount of funding per unit of average daily attendance for each special education local plan area, measured in dollars and cents, using the methodology contained in subdivision (a) of Section 56836.10, except that the amount used from the computation in Section 56836.09 shall be reduced by the amount computed pursuant to Article 2.5 (commencing with Section 56836.155).

(B) Determine the statewide target amount per unit of average daily attendance, measured in dollars and cents and rounded up to the nearest 50 cents ($0.50), as computed pursuant to subdivision (a) of Section 56836.11.

(C) The adjusted funding per unit of average daily attendance is below the statewide target amount if the amount calculated pursuant to subparagraph (A), subtracted from the amount calculated pursuant to subparagraph (B), yields a positive value.

(D) If the computation made pursuant to subparagraph (C) yields a positive value, increase the special disabilities adjustment in the 1999–2000 fiscal year and each year thereafter by the percent increase in growth in average daily attendance reported by the special education local plan area and the inflation factor computed pursuant to subdivision (b) of Section 42238.1 for the applicable fiscal year.

(E) Inclusion of the special disabilities adjustment in the total funding of a special education local plan area shall neither change nor be included in the computation of equalization funding pursuant to Section 56836.12 or the computations made after this computation that precede the computation in Section 56836.12.

(F) This paragraph shall not apply to the special education local plan area identified as the Los Angeles County Juvenile Court and Community School/Division of Alternative Education Special Education Local Plan Area.

(c) For the 1998–99 fiscal year and each fiscal year thereafter, the superintendent shall make the following computations to determine

the amount of General Fund moneys that the special education local plan area may claim:

(1) Add the total of the amount of property taxes for the special education local plan area pursuant to Section 2572 for the fiscal year in which the computation is made to the amount of federal funds allocated for the purposes of paragraphs (1) and (2) of subdivision (a) of Section 56836.09 for the fiscal year in which the computation is made.

(2) Add the amount of funding computed for the special education local plan area pursuant to subdivision (a) for the 1998–99 fiscal year, and commencing with the 1999–2000 fiscal year and each fiscal year thereafter, the amount computed for the fiscal year in which the computations were made pursuant to subdivision (b) to the amount of funding computed for the special education local plan area pursuant to Article 3 (commencing with Section 56836.16).

(3) Subtract the sum computed in paragraph (1) from the sum computed in paragraph (2).

(d) For the 1998–99 fiscal year and each fiscal year thereafter, the superintendent shall make the following computations to determine the inflation adjustment for the fiscal year in which the computation is made:

(1) For the 1998–99 fiscal year, multiply the statewide target amount per unit of average daily attendance for special education local plan areas for the 1997–98 fiscal year computed pursuant to paragraph (3) of Section 56836.11 by the inflation factor computed pursuant to subdivision (b) of Section 42238.1 for the 1998–99 fiscal year.

(2) For the 1999–2000 fiscal year and each fiscal year thereafter, multiply the statewide target amount per unit of average daily attendance for special education local plan areas for the prior fiscal year computed pursuant to Section 56836.11 by the inflation factor computed pursuant to subdivision (b) of Section 42238.1 for the fiscal year in which the computation is made.

(3) For the purposes of computing the inflation adjustment for the special education local plan area identified as the Los Angeles County Juvenile Court and Community School/Division of Alternative Education Special Education Local Plan Area for the 1998–99 fiscal year and each fiscal year thereafter, the superintendent shall multiply the amount of funding per unit of average daily attendance computed for that special education local plan area for the prior fiscal year pursuant to Section 56836.10 by the inflation factor computed pursuant to subdivision (b) of Section 42238.1 for the fiscal year in which the computation is being made.

SEC. 52. Section 56836.09 of the Education Code is amended to read:

56836.09. For the purpose of computing the amount to apportion to each special education local plan area for the 1998–99 fiscal year, the superintendent shall compute the total amount of funding

received by the special education local plan area for the 1997–98 fiscal year as follows:

(a) Add the following amounts that were received for the 1997–98 fiscal year:

(1) The total amount of federal funds apportioned to the special education local plan area pursuant to subdivision (b) of the Schedule in Item 6110-161-0890 of Section 2.00 of the Budget Act of 1997 for the purposes of special education for individuals with exceptional needs enrolled in kindergarten and grades 1 to 12, inclusive.

(2) The total amount of federal funds for the purposes of providing preschool and related services to individuals with exceptional needs who are ages 3 to 5 years, inclusive, pursuant to Chapter 4.45 (commencing with Section 56440) apportioned to the special education local plan area pursuant to subdivision (c) of the Schedule in Item 6110-161-0890 of Section 2.00 of the Budget Act of 1997, excluding amounts appropriated for local and state sponsored preschool in-service training programs pursuant to Provision 7 of Item 6110-161-0890 of Section 2.00 of the Budget Act of 1997.

(3) The total amount of property taxes allocated to the special education local plan area pursuant to Section 2572.

(4) The total amount of General Fund moneys allocated to the special education local plan area pursuant to Chapter 7 (commencing with Section 56700) plus the total amount received for equalization pursuant to Chapter 7.1 (commencing with Section 56835), as those chapters existed on December 31, 1998.

(5) The total amount of General Fund moneys allocated to another special education local plan area for any pupils with exceptional needs who are served by the other special education local plan area but who are residents of the special education local plan area for which this computation is being made.

(b) Add the following amounts received in the 1997–98 fiscal year:

(1) The total amount determined for the special education local plan area for the purpose of providing nonpublic, nonsectarian school services to licensed children's institutions, foster family homes, residential medical facilities, and other similar facilities for the 1997–98 fiscal year pursuant to Article 3 (commencing with Section 56836.16).

(2) The total amount of General Fund moneys allocated for any pupils with exceptional needs who are served by the special education local plan area but who do not reside within the boundaries of the special education local plan area.

(3) The total amount of General Fund moneys allocated to the special education local plan area to perform the regionalized operations and services functions listed in Article 6 (commencing with Section 56836.23) and to provide the direct instructional support of program specialists in accordance with Section 56368.

(4) The total amount of General Fund moneys allocated to the special education local plan area for individuals with exceptional

needs younger than three years of age pursuant to Chapter 7 (commencing with Section 56700), as that chapter existed on December 31, 1998.

(5) The total amount of General Fund moneys allocated to local educational agencies within the special education local plan area pursuant to Section 56771, as that section existed on December 31, 1998, for specialized books, materials, and equipment for pupils with low-incidence disabilities.

(c) Subtract the sum computed in subdivision (b) from the sum computed in subdivision (a).

SEC. 53. Section 56836.12 of the Education Code is amended to read:

56836.12. (a) For the purpose of computing the equalization adjustment for special education local plan areas for the 1998–99 fiscal year, the superintendent shall make the following computations to determine the amount that each special education local plan area that has an amount per unit of average daily attendance that is below the statewide target amount per unit of average daily attendance may request as an equalization adjustment:

(1) Subtract the amount per unit of average daily attendance computed for the special education local plan area pursuant to subdivision (a) of Section 56836.10 from the statewide target amount per unit of average daily attendance determined pursuant to subdivision (a) of Section 56836.11.

(2) If the remainder computed in paragraph (1) is greater than zero, multiply that remainder by the number of units of average daily attendance reported for the special education local plan area for the 1997–98 fiscal year.

(b) Commencing with the 1999–2000 fiscal year, through and including the fiscal year in which equalization among the special education local plan areas has been achieved, the superintendent shall make the following computations to determine the amount that each special education local plan area that has an amount per unit of average daily attendance that is below the statewide target amount per unit of average daily attendance may request as an equalization adjustment:

(1) Add to the amount per unit of average daily attendance computed for the special education local plan area pursuant to subdivision (b) of Section 56836.10 for the fiscal year in which the computation is made the inflation adjustment computed pursuant to subdivision (d) of Section 56836.08 for the fiscal year in which the computation is made.

(2) Subtract the amount computed pursuant to paragraph (1) from the statewide target amount per unit of average daily attendance computed pursuant to subdivision (b) of Section 56836.11 for the fiscal year in which the computation is made.

(3) If the remainder computed in paragraph (2) is greater than zero, multiply that remainder by the number of units of average daily

attendance reported for the special education local plan area for the prior fiscal year.

(c) This section shall not apply to the special education local plan area identified as the Los Angeles County Juvenile Court and Community School/Division of Alternative Education Special Education Local Plan Area.

SEC. 54. Section 56836.13 of the Education Code is amended to read:

56836.13. Commencing with the 1998–99 fiscal year, through and including the fiscal year in which equalization among the special education local plan areas has been achieved, the superintendent shall make the following computations to determine the amount available for making equalization adjustments for the fiscal year in which the computation is made:

(a) Subtract the prior fiscal year funds pursuant to paragraph (1) of subdivision (c) of Section 56836.08 from the current fiscal year funds pursuant to paragraph (1) of subdivision (c) of Section 56836.08.

(b) The amount of any increase in federal funds computed pursuant to subdivision (a) shall result in a reduction in state general funds computed pursuant to paragraph (3) of subdivision (c) of Section 56836.08. This is the amount of state general funds that shall be designated in the annual Budget Act for the purpose of Section 56836.12, as augmented by any deficiency appropriation, for the purposes of equalizing funding for special education local plan areas pursuant to this chapter.

(c) Until the actual amount of any increase in federal funds pursuant to subdivision (a) can be determined for the current fiscal year, equalization apportionments pursuant to Section 56836.12 shall be certified based on the authority available in Item 6110-161-0001 of the Budget Act of 1998, or its successor in the annual Budget Act.

SEC. 55. Section 56836.15 of the Education Code is amended to read:

56836.15. (a) In order to mitigate the effects of any declining enrollment, commencing in the 1998–99 fiscal year, and each fiscal year thereafter, the superintendent shall calculate allocations to special education local plan areas based on the average daily attendance reported for the special education local plan area for the fiscal year in which the computation is made or the prior fiscal year, whichever is greater. However, the prior fiscal year average daily attendance reported for the special education local plan area shall be adjusted for any loss or gain of average daily attendance reported for the special education local plan area due to a reorganization or transfer of territory in the special education local plan area.

(b) If in the fiscal year for which the computation is made, the number of units of average daily attendance upon which allocations to the special education local plan area are based is greater than the number of units of average daily attendance upon which allocations

to the special education local plan area were based in the prior fiscal year, the special education local plan area shall be allocated a growth adjustment equal to the product determined by multiplying the amounts determined under paragraphs (1) and (2).

(1) The statewide target amount per unit of average daily attendance for special education local plan areas determined pursuant to Section 56836.11.

(2) The difference between the number of units of average daily attendance upon which allocations to the special education local plan area are based for the fiscal year in which the computation is made and the number of units of average daily attendance upon which allocations to the special education local plan area were based for the prior fiscal year.

(c) If in the fiscal year for which the computation is made, the number of units of average daily attendance upon which allocations to the special education local plan area are based is less than the number of units of average daily attendance upon which allocations to the special education local plan area were based in the prior fiscal year, the special education local plan area shall receive a funding reduction equal to the product determined by multiplying the amounts determined under paragraphs (1) and (2):

(1) The amount of funding per unit of average daily attendance computed for the special education local plan area for the prior fiscal year.

(2) The difference between the number of units of average daily attendance upon which allocations to the special education local plan area are based for the fiscal year in which the computation is made and the number of units of average daily attendance upon which allocations to the special education local plan area were based for the prior fiscal year.

(d) If, in the fiscal year for which the computation is made, the number of units of average daily attendance upon which the allocations to the special education local plan area identified as the Los Angeles County Juvenile Court and Community School/Division of Alternative Education Special Education Local Plan Area are based is greater than the number of units of average daily attendance upon which the allocations to that special education local plan area were based in the prior fiscal year, that special education local plan area shall be allocated a growth adjustment equal to the product determined by multiplying the amounts determined under paragraphs (1) and (2).

(1) The amount of funding per unit of average daily attendance computed for the special education local plan area for the prior fiscal year pursuant to Section 56836.10 multiplied by one plus the inflation adjustment factor computed pursuant to subdivision (b) of Section 42238.1 for the fiscal year in which the computation is being made.

(2) The difference between the number of units of average daily attendance upon which allocations to the special education local plan

area are based for the fiscal year in which the computation is made and the number of units of average daily attendance upon which allocations to the special education local plan area were based for the prior fiscal year.

SEC. 56. Section 56836.155 of the Education Code is amended to read:

56836.155. (a) For the 1998–99 fiscal year, prior to calculating the apportionment in Article 2 (commencing with Section 56836.06), the superintendent shall perform the following calculation:

(1) Determine for each special education local plan area the number of pupils with exceptional needs with the special disabilities specified in subdivision (b) for pupils residing in the special education local plan area based on the April 1996 pupil count.

(2) Determine for each special education local plan area the total reported incidence of all disabilities for pupils of age 3 to 22 years, inclusive, excluding pupils in placements as described in paragraph (1) of subdivision (b).

(3) Determine the statewide total of reported incidence of special disabilities determined pursuant to paragraph (1).

(4) Determine the statewide total reported incidence of all disabilities determined pursuant to paragraph (2).

(b) For the purposes of paragraph (1) of subdivision (a), the superintendent shall use the count of all pupils with exceptional needs of age 3 to 22 years, inclusive, exclusive of placements in paragraph (1) and inclusive of the disabilities in paragraph (2).

(1) Pupils in state operated programs, nonpublic schools, and out-of-home placements.

(2) Pupils with low-incidence disabilities of autistic, hard of hearing, deaf, visually impaired, deaf/blind, and severe orthopedic impairment, except that, for the purposes of subdivision (a), pupils in the disability category of orthopedic impairment shall be used in the absence of special education local plan area counts of only severe orthopedic impairment. To the count of low-incidence disabilities, also add pupils in the disability category of traumatic brain injury.

(c) Calculate, for each special education local plan area, the reported incidence of special disabilities as a percentage of its total reported incidence of all disabilities by dividing the amount in paragraph (1) of subdivision (a) by the amount in paragraph (2) of subdivision (a). The percentage amount is to be expressed to the accuracy of one hundredth of a percentage point.

(d) Calculate the statewide total of reported incidence of special disabilities as a percent of the statewide total incidence of all disabilities by dividing the amount in paragraph (3) of subdivision (a) by the amount in paragraph (4) of subdivision (a). The percent amount is to be expressed to the accuracy of one hundredth of a percentage point.

(e) For each special education local plan area whose percentage of special disabilities calculated pursuant to subdivision (c) is greater

than the statewide percent of special disabilities pursuant to subdivision (d), determine the number of excess pupils in the special education local plan area as follows:

(1) Multiply the statewide percent of special disabilities calculated in subdivision (d) by the count by the special education local plan area of all disabilities determined pursuant to paragraph (2) of subdivision (a).

(2) Subtract the amount calculated in paragraph (1) from the count by the special education local plan area of special disabilities determined pursuant to paragraph (1) of subdivision (a). Round this number to the nearest whole number.

(f) Multiply the number of excess pupils calculated in subdivision (e) by one thousand dollars ($1,000). This is the amount that each special education local plan area having excess pupils is to receive as a special disabilities adjustment in the 1998–99 fiscal year and that is to be included in the total amount of funding received by the special education local plan area pursuant to Section 56836.08.

(g) This section shall not apply to the special education local plan area identified as the Los Angeles County Juvenile Court and Community School/Division of Alternative Education Special Education Local Plan Area.

SEC. 57. Section 56836.16 of the Education Code is amended to read:

56836.16. (a) For the 1 1998–99 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 master contracts with nonpublic, nonsectarian schools and agencies to provide special education instruction, designated instruction and 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 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 master contracts with nonpublic, nonsectarian schools and agencies to provide special education and designated instruction and services for these pupils, as determined by the superintendent.

(b) The cost of master 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 master contract or

individual services agreement 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 schools 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 master 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 master contract and individual services agreement under subdivision (a) of Section 56366.

(C) Language, speech, and hearing services other than those included in a master 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 master contract and individual services agreement under subdivision (a) of Section 56366.

(E) Other services not specified by a pupil's individualized education program or funded by the state on a caseload basis.

(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 (*l*) of Section 56366.1.

(10) Costs for services provided by public school employees.

(c) 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. 58. Section 56836.21 of the Education Code is amended to read:

56836.21. (a) The State Department of Education shall administer an extraordinary cost pool to protect special education local plan areas from the extraordinary costs associated with single placements in nonpublic, nonsectarian schools, excluding

placements reimbursed pursuant to Article 3 (commencing with Section 56836.16). Funds shall be appropriated for this purpose in the annual Budget Act. Special education local plan areas shall be eligible for reimbursement from this pool in accordance with this section.

(b) The threshold amount for claims under this section shall be the lesser of the following:

(1) One percent of the allocation calculated pursuant to Section 56836.08 for the special education local plan area for the current fiscal year for any special education local plan area that meets the criteria in Section 56212.

(2) The State Department of Education shall calculate the average cost of a nonpublic, nonsectarian school placement in the 1997–98 fiscal year. This amount shall be multiplied by 2.5, then by one plus the inflation factor computed pursuant to Section 42238.1, to obtain the alternative threshold amount for claims in the 1998–99 fiscal year. In subsequent fiscal years, the alternative threshold amount shall be the alternative threshold amount for the prior fiscal year multiplied by one plus the inflation factor computed pursuant to Section 42238.1.

(c) Special education local plan areas shall be eligible to submit claims for costs of any new nonpublic, nonsectarian school placements in excess of those in existence in the 1997–98 fiscal year and exceeding the threshold amount on forms developed by the State Department of Education. All claims for a fiscal year shall be submitted by November 30 following the close of the fiscal year. If the total amount claimed by special education local plan areas exceeds the amount appropriated, the claims shall be prorated.

SEC. 59. Section 56864 of the Education Code is amended to read:

56864. Individuals with exceptional needs residing in state hospitals shall not be included within the funding calculation made pursuant to Chapter 7.2 (commencing with Section 56836).

SEC. 60. Section 97.2 of the Revenue and Taxation Code is amended to read:

97.2. Notwithstanding any other provision of this chapter, the computations and allocations made by each county pursuant to Section 96.1 or its predecessor section shall be modified for the 1992–93 fiscal year pursuant to subdivisions (a) to (d), inclusive, and for the 1997–98 and 1998–99 fiscal years pursuant to subdivision (e), as follows:

(a) (1) Except as provided in paragraph (2), the amount of property tax revenue deemed allocated in the prior fiscal year to each county shall be reduced by the dollar amounts indicated as follows, multiplied by .953649:

	Property Tax Reduction per County
Alameda	$ 27,323,576
Alpine	5,169
Amador	286,131
Butte	846,452
Calaveras	507,526
Colusa	186,438
Contra Costa	12,504,318
Del Norte	46,523
El Dorado	1,544,590
Fresno	5,387,570
Glenn	378,055
Humboldt	1,084,968
Imperial	998,222
Inyo	366,402
Kern	6,907,282
Kings	1,303,774
Lake	998,222
Lassen	93,045
Los Angeles	244,178,806
Madera	809,194
Marin	3,902,258
Mariposa	40,136
Mendocino	1,004,112
Merced	2,445,709
Modoc	134,650
Mono	319,793
Monterey	2,519,507
Napa	1,362,036
Nevada	762,585
Orange	9,900,654
Placer	1,991,265
Plumas	71,076
Riverside	7,575,353
Sacramento	15,323,634
San Benito	198,090
San Bernardino	14,467,099
San Diego	17,687,776

San Francisco	53,266,991
San Joaquin	8,574,869
San Luis Obispo	2,547,990
San Mateo	7,979,302
Santa Barbara	4,411,812
Santa Clara	20,103,706
Santa Cruz	1,416,413
Shasta	1,096,468
Sierra	97,103
Siskiyou	467,390
Solano	5,378,048
Sonoma	5,455,911
Stanislaus	2,242,129
Sutter	831,204
Tehama	450,559
Trinity	50,399
Tulare	4,228,525
Tuolumne	740,574
Ventura	9,412,547
Yolo	1,860,499
Yuba	842,857

(2) Notwithstanding paragraph (1), the amount of the reduction specified in that paragraph for any county or city and county that has been materially and substantially impacted as a result of a federally declared disaster, as evidenced by at least 20 percent of the cities, or cities and unincorporated areas of the county representing 20 percent of the population within the county suffering substantial damage, as certified by the Director of the Office of Emergency Services, occurring between October 1, 1989, and the effective date of this section, shall be reduced by that portion of five million dollars ($5,000,000) determined for that county or city and county pursuant to subparagraph (B) of paragraph (3).

(3) On or before October 1, 1992, the Director of Finance shall do all of the following:

(A) Determine the population of each county and city and county in which a federally declared disaster has occurred between October 1, 1989, and the effective date of this section.

(B) Determine for each county and city and county as described in subparagraph (A) its share of five million dollars ($5,000,000) on the basis of that county's population relative to the total population of all counties described in subparagraph (A).

(C) Notify each auditor of each county and city and county of the amounts determined pursuant to subparagraph (B).

(b) (1) Except as provided in paragraph (2), the amount of property tax revenue deemed allocated in the prior fiscal year to each city, except for a newly incorporated city that did not receive property tax revenues in the 1991–92 fiscal year, shall be reduced by 9 percent. In making the above computation with respect to cities in Alameda County, the computation for a city described in paragraph (6) of subdivision (a) of Section 100.7, as added by Section 73.5 of Chapter 323 of the Statutes of 1983, shall be adjusted so that the amount multiplied by 9 percent is reduced by the amount determined for that city for "museums" pursuant to paragraph (2) of subdivision (h) of Section 95.

(2) Notwithstanding paragraph (1), the amount of the reduction determined pursuant to that paragraph for any city that has been materially and substantially impacted as a result of a federally declared disaster, as certified by the Director of the Office of Emergency Services, occurring between October 1, 1989, and the effective date of this section, shall be reduced by that portion of fifteen million dollars ($15,000,000) determined for that city pursuant to subparagraph (B) of paragraph (3).

(3) On or before October 1, 1992, the Director of Finance shall do all of the following:

(A) Determine the population of each city in which a federally declared disaster has occurred between October 1, 1989, and the effective date of this section.

(B) Determine for each city as described in subparagraph (A) its share of fifteen million dollars ($15,000,000) on the basis of that city's population relative to the total population of all cities described in subparagraph (A).

(C) Notify each auditor of each county and city and county of the amounts determined pursuant to subparagraph (B).

(4) In the 1992–93 fiscal year and each fiscal year thereafter, the auditor shall adjust the computations required pursuant to Article 4 (commencing with Section 98) so that those computations do not result in the restoration of any reduction required pursuant to this section.

(c) (1) Subject to paragraph (2), the amount of property tax revenue, other than those revenues that are pledged to debt service, deemed allocated in the prior fiscal year to a special district, other than a multicounty district, a local hospital district, or a district governed by a city council or whose governing board has the same membership as a city council, shall be reduced by 35 percent. For purposes of this subdivision, "revenues that are pledged to debt service" include only those amounts required to pay debt service costs in the 1991–92 fiscal year on debt instruments issued by a special district for the acquisition of capital assets.

(2) No reduction pursuant to paragraph (1) for any special district, other than a countywide water agency that does not sell water at retail, shall exceed an amount equal to 10 percent of that

district's total annual revenues, from whatever source, as shown in the 1989–90 edition of the State Controller's Report on Financial Transactions Concerning Special Districts (not including any annual revenues from fiscal years following the 1989–90 fiscal year). With respect to any special district, as defined pursuant to subdivision (m) of Section 95, that is allocated property tax revenue pursuant to this chapter but does not appear in the State Controller's Report on Financial Transactions Concerning Special Districts, the auditor shall determine the total annual revenues for that special district from the information in the 1989–90 edition of the State Controller's Report on Financial Transactions Concerning Counties. With respect to a special district that did not exist in the 1989–90 fiscal year, the auditor may use information from the first full fiscal year, as appropriate, to determine the total annual revenues for that special district. No reduction pursuant to paragraph (1) for any countywide water agency that does not sell water at retail shall exceed an amount equal to 10 percent of that portion of that agency's general fund derived from property tax revenues.

(3) The auditor in each county shall, on or before January 15, 1993, and on or before January 30 of each year thereafter, submit information to the Controller concerning the amount of the property tax revenue reduction to each special district within that county as a result of paragraphs (1) and (2). The Controller shall certify that the calculation of the property tax revenue reduction to each special district within that county is accurate and correct, and submit this information to the Director of Finance.

(A) The Director of Finance shall determine whether the total of the amounts of the property tax revenue reductions to special districts, as certified by the Controller, is equal to the amount that would be required to be allocated to school districts and community college districts as a result of a three hundred seventy-five million dollar ($375,000,000) shift of property tax revenues from special districts for the 1992–93 fiscal year. If, for any year, the total of the amount of the property tax revenue reductions to special districts is less than the amount as described in the preceding sentence, the amount of property tax revenue, other than those revenues that are pledged to debt service, deemed allocated in the prior fiscal year to a special district, other than a multicounty district, a local hospital district, or a district governed by a city council or whose governing board has the same membership as a city council, shall, subject to subparagraph (B), be reduced by an amount up to 5 percent of the amount subject to reduction for that district pursuant to paragraphs (1) and (2).

(B) No reduction pursuant to subparagraph (A), in conjunction with a reduction pursuant to paragraphs (1) and (2), for any special district, other than a countywide water agency that does not sell water at retail, shall exceed an amount equal to 10 percent of that district's total annual revenues, from whatever source, as shown in

the most recent State Controller's Report on Financial Transactions Concerning Special Districts. No reduction pursuant to subparagraph (A), in conjunction with a reduction pursuant to paragraphs (1) and (2), for any countywide water agency that does not sell water at retail shall exceed an amount equal to 10 percent of that portion of that agency's general fund derived from property tax revenues.

(C) In no event shall the amount of the property tax revenue loss to a special district derived pursuant to subparagraphs (A) and (B) exceed 40 percent of that district's property tax revenues or 10 percent of that district's total revenues, from whatever source.

(4) For the purpose of determining the total annual revenues of a special district that provides fire protection or fire suppression services, all of the following shall be excluded from the determination of total annual revenues:

(A) If the district had less than two million dollars ($2,000,000) in total annual revenues in the 1991–92 fiscal year, the revenue generated by a fire suppression assessment levied pursuant to Article 3.6 (commencing with Section 50078) of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code.

(B) In counties that contract with the state to protect state responsibility areas, the total amount of all funds, regardless of the source, that are appropriated to a district, including a fire department, by a board of supervisors pursuant to Section 25642 of the Government Code or Chapter 7 (commencing with Section 13890) of Part 2.7 of Division 12 of the Health and Safety Code for fire protection.

(C) The revenue received by a district as a result of contracts entered into pursuant to Section 4133 of the Public Resources Code.

(5) For the purpose of determining the total annual revenues of a resource conservation district, all of the following shall be excluded from the determination of total annual revenues:

(A) Any revenues received by that district from the state for financing the acquisition of land, or the construction or improvement of state projects, and for which that district serves as the fiscal agent in administering those state funds pursuant to an agreement entered into between that district and a state agency.

(B) Any amount received by that district as a private gift or donation.

(C) Any amount received as a county grant or contract as supplemental to, or independent of, that district's property tax share.

(D) Any amount received by that district as a federal or state grant.

(d) (1) The amount of property tax revenues not allocated to the county, cities within the county, and special districts as a result of the reductions calculated pursuant to subdivisions (a), (b), and (c) shall instead be deposited in the Educational Revenue Augmentation Fund to be established in each county. 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 1991–92 fiscal year.

(2) The auditor shall, based on information provided by the county superintendent of schools pursuant to this paragraph, allocate the proportion of the Educational Revenue Augmentation Fund to those school districts and county offices of education within the county that are not excess tax school entities, as defined in subdivision (n) of Section 95. The county superintendent of schools shall determine the amount to be allocated to each school district and county office of education in inverse proportion to the amounts of property tax revenue per average daily attendance in each school district and county office of education. In no event shall any additional money be allocated from the fund to a school district or county office of education upon that school district or county office of education becoming an excess tax school entity.

(3) The auditor shall, based on information provided by the Chancellor of the California Community Colleges pursuant to this paragraph, allocate the proportion of the Educational Revenue Augmentation Fund to those community college districts within the county that are not excess tax school entities, as defined in subdivision (n) of Section 95. 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 fund to a community college district upon that district becoming an excess tax school entity.

(4) (A) 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).

(B) (i) For the 1995–96 fiscal year and each fiscal year thereafter, if, after making the allocations pursuant to paragraphs (2) and (3) and subparagraph (A), the auditor determines that there are still additional funds to be allocated, the auditor shall, subject to clauses (ii) and (iii), allocate those excess funds to the county superintendent of schools. Funds allocated pursuant to this subparagraph shall be counted as property tax revenues for special education programs in augmentation of the amount calculated pursuant to Section 2572 of the Education Code, to the extent that those property tax revenues offset state aid for county offices of

education and school districts within the county pursuant to subdivision (c) of Section 56836.08 of the Education Code.

(ii) For the 1995–96 fiscal year only, this subparagraph shall have no application to the County of Mono and the amount allocated pursuant to this subparagraph in the County of Marin shall not exceed five million dollars ($5,000,000).

(iii) For the 1996–97 fiscal year only, the total amount of funds allocated by the auditor pursuant to this subparagraph and subparagraph (B) of paragraph (4) of subdivision (d) of Section 97.3 shall not exceed that portion of two million five hundred thousand dollars ($2,500,000) that corresponds to the county's proportionate share of all moneys allocated pursuant to this subparagraph and subparagraph (B) of paragraph (4) of subdivision (d) of Section 97.3 for the 1995–96 fiscal year. Upon the request of the auditor, the Department of Finance shall provide to the auditor all information in the department's possession that is necessary for the auditor to comply with this clause.

(C) For purposes of allocating the Educational Revenue Augmentation Fund for the 1996–97 fiscal year, the auditor shall, after making the allocations for special education programs, if any, required by subparagraph (B), allocate all remaining funds among the county, cities, and special districts in proportion to the amounts of ad valorem property tax revenue otherwise required to be shifted from those local agencies to the county's Educational Revenue Augmentation Fund for the relevant fiscal year. For purposes of ad valorem property tax revenue allocations for the 1997–98 fiscal year and each fiscal year thereafter, no amount of ad valorem property tax revenue allocated to the county, a city, or a special district pursuant to this subparagraph shall be deemed to be an amount of ad valorem property tax revenue allocated to that local agency in the prior fiscal year.

(5) For purposes of allocations made pursuant to Section 96.1 or its predecessor section for the 1993–94 fiscal year, the amounts allocated from the Educational Revenue Augmentation Fund pursuant to this subdivision, other than amounts deposited in the Educational Revenue Augmentation Fund pursuant to Section 33681 of the Health and Safety Code, shall be deemed property tax revenue allocated to the Educational Revenue Augmentation Fund in the prior fiscal year.

(e) (1) For the 1997–98 fiscal year:

(A) The amount of property tax revenue deemed allocated in the prior fiscal year to any city subject to the reduction specified in paragraph (2) of subdivision (b) shall be reduced by an amount that is equal to the difference between the amount determined for the city pursuant to paragraph (1) of subdivision (b) and the amount of the reduction determined for the city pursuant to paragraph (2) of subdivision (b).

(B) The amount of property tax revenue deemed allocated in the prior fiscal year to any county or city and county subject to the reduction specified in paragraph (2) of subdivision (a) shall be reduced by an amount that is equal to the difference between the amount specified for the county or city and county pursuant to paragraph (1) of subdivision (a) and the amount of the reduction determined for the county or city and county pursuant to paragraph (2) of subdivision (a).

(2) The amount of property tax revenues not allocated to a city or city and county as a result of this subdivision shall be deposited in the Educational Revenue Augmentation Fund described in subparagraph (A) of paragraph (1) of subdivision (d).

(3) For purposes of allocations made pursuant to Section 96.1 for the 1998–99 fiscal year, the amounts allocated from the Educational Revenue Augmentation Fund pursuant to this subdivision shall be deemed property tax revenues allocated to the Educational Revenue Augmentation Fund in the prior fiscal year.

(f) It is the intent of the Legislature in enacting this section that this section supersede and be operative in place of Section 97.03 of the Revenue and Taxation Code, as added by Senate Bill 617 of the 1991–92 Regular Session.

SEC. 61. Section 97.3 of the Revenue and Taxation Code is amended to read:

97.3. Notwithstanding any other provision of this chapter, the computations and allocations made by each county pursuant to Section 96.1 or its predecessor section, as modified by Section 97.2 or its predecessor section 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 (2) 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 each qualifying school entity that would not have been allocated for the 1993–94 fiscal year but for the implementation of that alternative procedure. For purposes of this paragraph, "qualifying school entity" means any school district, county office of education, or community college district that is not an excess tax school entity as defined in Section 95.1. Notwithstanding any other provision of this paragraph, the amount of any reduction calculated pursuant to this paragraph for any county or city and county shall not exceed the reduction calculated for that county or city and county pursuant to paragraph (2).

(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) (A) 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:

(i) A local hospital district as described in Division 23 (commencing with Section 32000) of the Health and Safety Code.

(ii) 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.

(iii) A transit district.

(iv) A police protection district formed pursuant to Part 1 (commencing with Section 20000) of Division 14 of the Health and Safety Code.

(v) A special district that was a multicounty special district as of July 1, 1979.

(B) Notwithstanding any other provision of this subdivision, the first one hundred four thousand dollars ($104,000) of the amount of any reduction that otherwise would be made under this subdivision with respect to a qualifying community services district shall be excluded. For purposes of this subparagraph, a "qualifying community services district" means a community service district that meets all of the following requirements:

(i) Was formed pursuant to Division 3 (commencing with Section 61000) of Title 6 of the Government Code.

(ii) Succeeded to the duties and properties of a police protection district upon the dissolution of that district.

(iii) Currently provides police protection services to substantially the same territory as did that district.

(iv) Is located within a county in which the board of supervisors has requested the Department of Finance that this subparagraph be operative in the county.

(3) (A) 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 Section 96 or 96.1, and Section 96.5 or their predecessor sections for the 1993–94 fiscal year multiplied by the ratio determined pursuant to paragraph (1) of subdivision (a) of former Section 98.6 as that section read on June 15, 1993. In those counties that were subject to former Sections 98.66, 98.67, and 98.68, as those sections read on that same date, the county auditor shall determine an amount for each special district that represents the current amount of its allocation determined pursuant to Section 96 or 96.1, and Section 96.5 or their predecessor sections 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 that county subject to Section 100.4, the county auditor shall determine an amount for each special district that represents the current amount of its allocations determined pursuant to Section 96, 96.1, 96.5, or 100.4 or their predecessor sections for the 1993–94 fiscal year that is attributable to the property tax shift from schools required by Chapter 282 of the Statutes of 1979. In determining these amounts, 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.

(B) Notwithstanding subparagraph (A), commencing with the 1994–95 fiscal year, in the County of Sacramento, the auditor shall determine the amount for each special district that represents the current amount of its allocations determined pursuant to Section 96, 96.1, 96.5, or 100.6 for the 1994–95 fiscal year that is attributed to the property tax shift from schools required by Chapter 282 of the Statutes of 1979.

(4) (A) (i) 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. For purposes of the preceding sentence for counties of the second class, the phrase "amount of revenue allocated to that special district" means an amount of revenue that was identified for transfer to that special district, rather than the amount of revenue that was actually received by that special district pursuant to that transfer.

(ii) 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 former 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 former Section 98.65, 98.66, 98.67, or 98.68 in that same fiscal year, 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 97.2. 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 subdivision (n) of Section 95. 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 subdivision (n) of Section 95. 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) (A) 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.

(B) (i) For the 1995–96 fiscal year and each fiscal year thereafter, if, after making the allocations pursuant to paragraphs (2) and (3) and subparagraph (A), the auditor determines that there are still additional funds to be allocated, the auditor shall, subject to clauses (ii) and (iii), allocate those excess funds to the county superintendent of schools. Funds allocated pursuant to this subparagraph shall be counted as property tax revenues for special education programs in augmentation of the amount calculated

pursuant to Section 2572 of the Education Code, to the extent that those property tax revenues offset state aid for county offices of education and school districts within the county pursuant to subdivision (c) of Section 56836.08 of the Education Code.

(ii) For the 1995–96 fiscal year only, this subparagraph shall have no application to the County of Mono and the amount allocated pursuant to this subparagraph in the County of Marin shall not exceed five million dollars ($5,000,000).

(iii) For the 1996–97 fiscal year only, the total amount of funds allocated by the auditor pursuant to this subparagraph and subparagraph (B) of paragraph (4) of subdivision (d) of Section 97.2 shall not exceed that portion of two million five hundred thousand dollars ($2,500,000) that corresponds to the county's proportionate share of all moneys allocated pursuant to this subparagraph and subparagraph (B) of paragraph (4) of subdivision (d) of Section 97.2 for the 1995–96 fiscal year. Upon the request of the auditor, the Department of Finance shall provide to the auditor all information in the department's possession that is necessary for the auditor to comply with this clause.

(C) For purposes of allocating the Educational Revenue Augmentation Fund for the 1996–97 fiscal year, the auditor shall, after making the allocations for special education programs, if any, required by subparagraph (B), allocate all remaining funds among the county, cities, and special districts in proportion to the amounts of ad valorem property tax revenue otherwise required to be shifted from those local agencies to the county's Educational Revenue Augmentation Fund for the relevant fiscal year. For purposes of ad valorem property tax revenue allocations for the 1997–98 fiscal year and each fiscal year thereafter, no amount of ad valorem property tax revenue allocated to the county, a city, or a special district pursuant to this subparagraph shall be deemed to be an amount of ad valorem property tax revenue allocated to that local agency in the prior fiscal year.

(5) For purposes of allocations made pursuant to Section 96.1 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. 62. This act shall become operative July 1, 1998.

SEC. 63. 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, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 64. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or 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 special education funding reform is implemented appropriately pursuant to Chapter 854 of the Statutes of 1997, it is necessary that this act take effect immediately.

CHAPTER 90

An act to make an appropriation in augmentation of Items 9840-001-0001, 9840-001-0494, 9840-001-0988, and 9840-011-0001 of Section 2.00 of the Budget Act of 1997, relating to contingencies or emergencies, to take effect immediately as an appropriation for the usual current expenses of the state.

[Approved by Governor June 30, 1998. Filed with Secretary of State June 30, 1998.]

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

SECTION 1. (a) The sum of two hundred sixty-eight million one hundred sixty-three thousand dollars ($268,163,000) is hereby appropriated for expenditure in the 1997–98 fiscal year in augmentation and for the purposes of Contingencies or Emergencies as provided in Items 9840-001-0001, 9840-001-0494, 9840-001-0988, and 9840-011-0001 of Section 2.00 of the Budget Act of 1997 (Ch. 282, Stats. 1997), in accordance with the following schedule:

(1) One hundred seventy-eight million eight hundred ninety-eight thousand dollars ($178,898,000) from the General Fund to the reserve for Contingencies or Emergencies in Item 9840-001-0001.

(2) Sixty million nine hundred four thousand dollars ($60,904,000) from unallocated special funds to the reserve for Contingencies or Emergencies in Item 9840-001-0494.

(3) Twenty-eight million two hundred twenty-three thousand dollars ($28,223,000) from unallocated nongovernmental cost funds to the reserve for Contingencies or Emergencies in Item 9840-001-0988.

(4) One hundred thirty-eight thousand dollars ($138,000) from the General Fund to the reserve for Contingencies and Emergencies (Loans) in Item 9840-011-0001.

(b) The Director of Finance may withhold authorization for the expenditure of funds provided in this section until such time as, and to the extent that, preliminary estimates of potential deficiencies are verified.

SEC. 2. Any federal funds received for the federal share of costs pertaining to the deficiencies for the implementation of the Healthy Families Program of the Managed Risk Medical Insurance Board and the State Department of Health Services, shall be repaid to the General Fund.

SEC. 3. This act makes an appropriation for the usual current expenses of the state within the meaning of Article IV of the California Constitution and shall go into immediate effect.

CHAPTER 91

An act to add Section 1094.7 to the Code of Civil Procedure, to amend Sections 20677, 20963, 21071, and 21423 of, and to add Sections 3517.65, 18523.3, 18670.2, 18717.2, 18903.2, 19056.6, 19141.3, 19142.2, 19170.3, 19173.3, 19175.6, 19570.3, 19572.3, 19574.6, 19576.4, 19582.2, 19582.3, 19582.7, 19608, 19702.7, 19786.2, 19798.2, 19815.42, 19816.22, 19816.23, 19817.8, 19818.9, 19818.15, 19826.3, 19828.2, 19829.2, 19832.2, 19834.2, 19835.2, 19836.3, 19841.2, 19853.3, 19854.2, 19994.6, 19994.7, 19994.8, 19997.40, 19997.43, 19997.44, 19997.45, 19997.46, 19997.47, 19997.48, 19997.51, 19997.53, 20037.5, 20068.2, 20405.3, 21073.5, 21073.6, 21353.5, 22013.82, 22754.2, 22754.11, and 22955.2 to, the Government Code, and to add Sections 10295.3 and 10344.3 to, the Public Contract Code, relating to state employees, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 3, 1998. Filed with Secretary of State July 3, 1998.]

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

SECTION 1. The Legislature finds and declares that the purpose of Section 2 is to adopt an agreement pursuant to Section 3517 of the Government Code entered into by the state employer and a recognized employee organization to make any necessary statutory changes in health, retirement, salary, or other benefits.

SEC. 2. The provisions of the memorandum of understanding, prepared pursuant to Section 3517.5 of the Government Code, and entered into by the state employer and State Bargaining Unit 19, the American Federation of State, County and Municipal Employees, and that requires the expenditure of funds or legislative action to

permit their implementation, are hereby approved for the purposes of Section 3517.6 of the Government Code.

SEC. 3. Any provision in a memorandum of understanding approved by Section 2 that is scheduled to take effect on or after July 1, 1998, 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. 4. Notwithstanding Section 3517.6 of the Government Code, the provisions of any memorandum of understanding that requires 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. 5. Section 1094.7 is added to the Code of Civil Procedure, to read:

1094.7. Effective June 1, 1998, notwithstanding Section 1094.5, this section shall apply only to state employees in State Bargaining Unit 19. For purposes of this section, the court is not authorized to review any minor disciplinary decisions reached pursuant to Section 19576.1 or 19576.4 of the Government Code.

SEC. 6. Section 3517.65 is added to the Government Code, to read:

3517.65. (a) Notwithstanding Section 3517.6, this section shall apply only to state employees in State Bargaining Unit 19.

(b) In any case where the provisions of Section 70031 of the Education Code, or subdivision (i) of Section 3513, or Section 14876, 18714, 19080.5, 19100, 19143, 19261, 19576.1, 19582.3, 19175.5, 19818.16, 19819.1, 19820, 19822, 19824, 19826, 19827, 19828, 19829, 19830, 19831, 19832, 19833, 19834, 19835, 19836, 19837, 19838, 19839, 19840, 19841, 19842, 19843, 19844, 19845, 19846, 19847, 19848, 19849, 19849.1, 19849.4, 19850.1, 19850.2, 19850.3, 19850.4, 19850.5, 19850.6, 19851, 19853, 19854, 19856, 19856.1, 19858.1, 19858.2, 19859, 19860, 19861, 19862, 19862.1, 19863, 19863.1, 19864, 19866, 19869, 19870, 19871, 19871.1, 19872, 19873, 19874, 19875, 19876, 19877, 19877.1, 19878, 19879, 19880, 19880.1, 19881, 19882, 19883, 19884, 19885, 19887, 19887.1, 19887.2, 19888, 19990, 19991, 19991.1, 19991.2, 19991.3, 19991.4, 19991.5, 19991.6, 19991.7, 19992, 19992.1, 19992.2, 19992.3, 19992.4, 19993, 19994.1, 19994.2, 19994.3, 19994.4, 19995, 19995.1, 19995.2, 19995.3, 19996.1, 19996.2, 19998, 19998.1, 20750.11, 21400, 21402, 21404, 21405, 22825, or 22825.1 are in conflict with the provisions of a memorandum of understanding, the memorandum of understanding shall be controlling without further legislative action.

(c) In any case where the provisions of Section 19997.2, 19997.9, 19997.10, 19997.12, or 19997.14 19997.43, 19997.48, 19997.51, 19997.53, are in conflict with the provisions of a memorandum of understanding, the terms of the memorandum of understanding shall

be controlling unless the State Personnel Board finds those terms to be inconsistent with merit employment principles as provided for by Article VII of the California Constitution. Where this finding is made, the provisions of the Government Code shall prevail until those affected sections of the memorandum of understanding are renegotiated to resolve the inconsistency. If any provision of the memorandum of understanding requires the expenditure of funds, those provisions of the memorandum of understanding shall not become effective unless approved by the Legislature in the annual Budget Act. If any provision of the memorandum of understanding requires legislative action to permit its implementation by amendment of any section not cited above, those provisions of the memorandum of understanding shall not become effective unless approved by the Legislature.

SEC. 7. Section 18523.3 is added to the Government Code, to read:

18523.3. (a) Notwithstanding Section 18523, this section shall apply only to state employees in State Bargaining Unit 19.

(b) "Class" means a group of positions sufficiently similar with respect to duties and responsibilities that the same title may reasonably and fairly be used to designate each position allocated to the class and that substantially the same tests of fitness may be used and that substantially the same minimum qualifications may be required and that the same schedule of compensation may be made to apply with equity.

(c) The board may also establish "broadband" classes for which the same general title may be used to designate each position allocated to the class and which may include more than one level or more than one specialty area within the same general field or work. In addition to the minimum qualifications for each broadband class, other job-related qualifications may be required for particular positions within the class. When the board establishes a broadband class, these levels and specialty areas shall be described in the class specification, and the board shall specify any instances in which these levels and speciality areas are to be treated as separate classes for purposes of applying other provisions of law.

SEC. 8. Section 18670.2 is added to the Government Code, to read:

18670.2. Notwithstanding Section 18670, effective June 1, 1998, this section shall apply only to state employees in State Bargaining Unit 19. Any minor discipline, as defined by Section 19576.4, is not subject to either a board investigation or hearing.

SEC. 9. Section 18717.2 is added to the Government Code, to read:

18717.2. Section 18717 does not apply to state employees in State Bargaining Unit 19.

SEC. 10. Section 18903.2 is added to the Government Code, to read:

18903.2. (a) Notwithstanding Section 18903, this section shall apply only to state employees in State Bargaining Unit 19.

(b) For each entry level class there shall be maintained a general reemployment list consisting of the names of all persons who have occupied positions with probationary or permanent status in the class and who have been legally laid off, demoted in lieu of layoff, or transferred in lieu of layoff.

(c) Within one year from the date of his or her resignation in good standing, or his or her voluntary demotion, the name of an employee who had probationary or permanent status may be placed on the general reemployment list with the consent of the appointing power and the board. The general reemployment list may also contain the names of persons placed thereon by the board in accordance with other provisions of this part.

SEC. 11. Section 19056.6 is added to the Government Code, to read:

19056.6. Notwithstanding Section 19056.5, this section shall apply only to state employees in State Bargaining Unit 19. If the appointment is to be made from a general reemployment list, the name of the person with the highest standing on the list shall be certified to the appointing power.

SEC. 12. Section 19141.3 is added to the Government Code, to read:

19141.3. (a) Notwithstanding Section 19141, this section shall apply only to state employees in State Bargaining Unit 19.

(b) This section applies only to a permanent employee, or an employee who previously had permanent status and who, since that permanent status, has had no break in the continuity of his or her state service due to a permanent separation. As used in this section, "former position" is defined as in Section 18522, or, if the appointing power to which reinstatement is to be made and the employee agree, a vacant position in any department, commission, or state agency for which he or she is qualified at substantially the same level.

(c) Within the periods of time specified below, an employee who vacates a civil service position to accept an appointment to an exempt position shall be reinstated to his or her former position at the termination either by the employee or appointing power of the exempt appointment, provided he or she (1) accepted the appointment without a break in the continuity of state service, and (2) requests in writing reinstatement of the appointing power of his or her former position within 10 working days after the effective date of the termination.

(d) The reinstatement may be requested by the employee only within the following periods of time:

(1) At any time after the effective date of the exempt appointment if the employee was appointed under one of the following:

(A) Subdivision (a), (b), (c), (d), (e), (f), (g), or (m) of Section 4 of Article VII of the California Constitution.

(B) Section 2.1 of Article IX of the California Constitution.

(C) Section 22 of Article XX of the California Constitution.

(D) To an exempt position under the same appointing power as the former position even though a shorter period of time may be otherwise specified for that appointment.

(2) Within six months after the effective date of the exempt appointment if appointed under subdivision (h), (i), (k), or (*l*) of Section 4 of Article VII of the California Constitution.

(3) (1) Within four years after the effective date of an exempt appointment if appointed under any other authority.

(e) An employee who vacates his or her civil service position to accept an assignment as a member, inmate, or patient helper under subdivision (j) of Section 4 of Article VII of the California Constitution shall not have a right to reinstatement.

(f) An employee who is serving under an exempt appointment retains a right of reinstatement when he or she accepts an extension of that exempt appointment or accepts a new exempt appointment, provided the extension or new appointment is made within the specified reinstatement time limit and there is no break in the continuity of state service. The period for which that right is retained is for the period applicable to the extended or new exempt appointment as if that appointment had been made on the date of the initial exempt appointment.

(g) When an employee exercises his or her right of reinstatement and returns to his or her former position, the service while under an exempt appointment shall be deemed to be time served in the former position for the purpose of determining his or her eligibility for merit salary increases.

(h) If the termination of an exempt appointment is for a reason contained in Section 19997 and the employee does not have a right to reinstatement, he or she shall have his or her name placed on the departmental and general reemployment lists for the class of his or her former position.

SEC. 13. Section 19142.2 is added to the Government Code, to read:

19142.2. (a) Notwithstanding Section 19142, this section shall apply only to state employees in State Bargaining Unit 19.

(b) Every person accepts and holds a position in the state civil service subject to mandatory reinstatement of another person.

(c) Upon reinstatement of a person, any necessary separations are effected under Section 19997.43 governing layoff and demotion except that an employee who is not to be separated from state service need not receive advance notification as provided in Section 19997.53.

SEC. 14. Section 19170.3 is added to the Government Code, to read:

19170.3. (a) Notwithstanding Section 19170, for state employees in State Bargaining Unit 19, the board shall establish for each class the length of the probationary period. The probationary period that shall be served upon appointment shall be not less than six months nor more than two years.

(b) The board may provide by rule: (1) for increasing the length of an individual probationary period by adding thereto periods of time during which an employee, while serving as a probationer, is absent from his or her position; or (2) for requiring an additional period not to exceed the length of the original probationary period when a probationary employee returns after an extended period of absence and the remainder of the probationary period is insufficient to evaluate his or her current performance.

SEC. 15. Section 19173.3 is added to the Government Code, to read:

19173.3. (a) Effective June 1, 1998, notwithstanding Section 19173, this section shall apply only to state employees in State Bargaining Unit 19.

(b) Any probationer may be rejected by the appointing power during the probationary period for reasons relating to the probationer's qualifications, the good of the service, or failure to demonstrate merit, efficiency, and fitness.

(c) A rejection during probationary period is effected by the service upon the probationer of a written notice of rejection that shall include: (1) an effective date for the rejection that shall not be later than the last day of the probationary period; and (2) a statement of the reasons for the rejection. Service of the notice shall be made prior to the effective date of the rejection. Notice of rejection shall be served prior to the conclusion of the prescribed probationary period. The probationary period may be extended when necessary to provide the full notice period required by board rule. Within 15 days after the effective date of the rejection, a copy thereof shall be filed with the board.

SEC. 16. Section 19175.6 is added to the Government Code, to read:

19175.6. (a) Notwithstanding Section 19175, this section shall apply only to state employees in State Bargaining Unit 19.

(b) The board at the written request of a rejected probationer, filed within 15 calendar days of the effective date of rejection, shall only review allegations that the rejection was made for reasons of discrimination as defined for the purposes of subdivision (a) of Section 19702, fraud, or political patronage. If the board determines that the rejected probationer has stated a prima face case of discrimination, fraud, or political patronage, the board may investigate the case with or without a hearing and do any one of the following:

(1) Affirm the action of the appointing power.

(2) Modify the action of the appointing power.

(3) Restore the name of the rejected probationer to the employment list for certification to any position within the class, provided that his or her name shall not be certified to the agency by which he or she was rejected, except with the concurrence of the appointing power thereof.

(4) Restore the rejected probationer to the position from which he or she was rejected, but this shall be done only if the board determines that there is substantial evidence to support that the rejection was made for reasons of discrimination as defined for the purposes of subdivision (a) of Section 19702, fraud, or political patronage. At any such investigation or hearing the rejected probationer shall have the burden of proof; subject to rebuttal by him or her, it shall be presumed that the rejection was free from discrimination, fraud, and political patronage, and that the statement of reasons therefor in the notice of rejection is true.

SEC. 17. Section 19570.3 is added to the Government Code, to read:

19570.3. Notwithstanding Section 19570, this section shall apply only to state employees in State Bargaining Unit 19. As used in this article, "disciplinary action" means dismissal, demotion, suspension, or other disciplinary action. "Disciplinary action" does not include a written or oral reprimand taken against an employee. Reprimands may be considered for the purpose of progressive discipline. This article shall not apply to any disciplinary action affecting managerial employees subject to Article 2 (commencing with Section 19590), except as provided in Sections 19590.5, 19592, and 19592.2.

SEC. 18. Section 19572.3 is added to the Government Code, to read:

19572.3. (a) Notwithstanding Section 19572, this section shall apply only to state employees in State Bargaining Unit 19.

(b) Disciplinary actions pursuant to Section 19576.4 shall be for just cause or one or more of the following causes for discipline:

(1) Fraud in securing appointment.
(2) Incompetency.
(3) Inefficiency.
(4) Inexcusable neglect of duty.
(5) Insubordination.
(6) Dishonesty.
(7) Drunkenness on duty.
(8) Intemperance.
(9) Addiction to the use of controlled substances.
(10) Inexcusable absence without leave.
(11) Conviction of a felony or conviction of a misdemeanor involving moral turpitude. A plea or verdict of guilty, or a conviction following a plea of nolo contendere, to a charge of a felony of any offense involving moral turpitude is deemed to be a conviction within the meaning of this section.
(12) Immorality.

(13) Discourteous treatment of the public or other employees.
(14) Improper political activity.
(15) Willful disobedience.
(16) Misuse of state property.
(17) Violation of this part or board rule.
(18) Violation of the prohibitions set forth in accordance with Section 19990.
(19) Refusal to take and subscribe any oath or affirmation that is required by law in connection with the employment.
(20) Other failure of good behavior either during or outside of duty hours that is of such a nature that it causes discredit to the appointing authority of the person's employment.
(21) Any negligence, recklessness, or intentional act that results in the death of a patient of a state hospital serving the mentally disabled or the developmentally disabled.
(22) The use during duty hours, for training or target practice, of any material that is not authorized therefor by the appointing power.
(23) Unlawful discrimination, including harassment, on the basis of race, religious creed, color, national origin, ancestry, disability, marital status, sex, or age, against the public or other employees while acting in the capacity of a state employee.
(24) Unlawful retaliation against any other state officer or employee or member of the public who in good faith reports, discloses, divulges, or otherwise brings to the attention of, the Attorney General, or any other appropriate authority, any facts or information relative to actual or suspected violation of any law of this state or the United States occurring on the job or directly related thereto.
(c) If provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if those provisions of a memorandum of understanding require the expenditure of funds, the provision shall not become effective unless approved by the Legislature in the annual Budget Act.
SEC. 19. Section 19574.6 is added to the Government Code, to read:
19574.6. Notwithstanding Section 19574, effective June 1, 1998, this section shall apply only to state employees in State Bargaining Unit 19. This section shall not apply to minor discipline as defined by Section 19576.4.
SEC. 20. Section 19576.4 is added to the Government Code, to read:
19576.4. (a) Notwithstanding Section 19576, this section shall apply only to state employees in State Bargaining Unit 19.
(b) Minor discipline is a suspension without pay for five days or less or up to a 5-percent reduction in pay for five months or less. Whenever an answer is filed by an employee who is subject to minor

discipline, and the memorandum of understanding for state employees in State Bargaining Unit 19 has expired, the State Personnel Board shall follow the minor discipline appeal procedures contained in Article 15A, Section 15.13A, paragraphs 1 to 16, inclusive, of the expired memorandum of understanding for state employees in State Bargaining Unit 19 until a successor agreement is negotiated between Department of Personnel Administration and the exclusive representative. However, if an employee receives one of the cited actions in more than three instances in any 12-month period, he or she shall, upon each additional action within the same 12-month period, be afforded a hearing before the State Personnel Board if he or she files an answer to the action.

(c) The State Personnel Board shall not have the authority as stated in subdivision (b) with regard to written or oral reprimands. Reprimands shall not be grievable or appealable by the receiving employee by any means. Rejections on probation shall not be grievable or appealable by the receiving employee by any means except as provided in Section 19175.1.

(d) The appointing power shall not impose any discipline in a manner that is inconsistent with "salary basis test" against an employee employed in an executive, administrative, or professional capacity and whose duties exempt him or her from the wage and hour provisions of the federal Fair Labor Standards Act as set forth pursuant to Section 13(a)(1) of the Fair Labor Standards Act of 1938, as amended, (Title 29, Section 213(a)(1), United States Code) and in Part 54 of Title 29 of the Code of Federal Regulations, as defined and delimited on the effective date of this section, and as those provisions may be amended in the future by the Administrator of the Wage and Hour Division of the United States Department of Labor.

(e) Disciplinary action taken pursuant to this section shall not be subject to the following provisions: 19180, 19574.1, 19574.2, 19575, 19575.5, 19579, 19580, 19581, 19581.5, 19582, 19583, and 19587, and State Personnel Board Rules 51.1 to 51.9, inclusive, 52, and 52.1 to 52.5, inclusive.

(f) Notwithstanding any other law or rule, if the provisions of this section are in conflict with the provisions of the memorandum of understanding reached pursuant to Section 3517.5, 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.

(g) If the State Personnel Board establishes regulations to implement this section, the regulations shall be consistent with the expired memorandum of understanding for state employees in State Bargaining Unit 19 and the Ralph C. Dills Act (Part 10.3 (commencing with Section 3512) of Division 4 of Title 1).

SEC. 21. Section 19582.2 is added to the Government Code, to read:

19582.2. Section 19582 shall not apply to minor discipline, as defined in a memorandum of understanding or by Section 19576.4, for state employees in State Bargaining Unit 19.

SEC. 22. Section 19582.3 is added to the Government Code, to read:

19582.3. (a) Notwithstanding Section 19582, this section shall apply only to state employees in State Bargaining Unit 19.

(b) The board's review of decisions of minor discipline, as defined by a memorandum of understanding or by Section 19576.4, shall be limited to either adopting the penalty of the proposed decision or revoking the disciplinary action in its entirety.

(c) The board's review of decisions of discipline, including minor discipline, shall not impose any discipline against an employee that would jeopardize the employee's status under the federal Fair Labor Standards Act, as set forth pursuant to Section 13(a)(1) of The Fair Labor Standards Act of 1938, as amended (Title 29, Section 213(a)(1), United States Code) and in Part 54 of Title 29 of the Code of Federal Regulations, as defined and delimited on the effective date of this section and as those provisions maybe amended in the future.

(d) If provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provision shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 23. Section 19582.7 is added to the Government Code, to read:

19582.7. (a) Effective June 1, 1998, notwithstanding Section 19582.5, this section shall apply only to state employees in State Bargaining Unit 19.

(b) The board may designate certain of its decisions as precedents. Precedential decisions shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3. The board may provide by rule for the reconsideration of a previously issued decision to determine whether or not it shall be designated as a precedent decision. All decisions designated as precedents shall be published in a manner determined by the board.

(c) For the purpose of this section, a decision reached pursuant to Section 19576.4 is not subject to board precedential decision, and the board may not adopt that decision as a precedential decision.

SEC. 24. Section 19608 is added to the Government Code, to read:

19608. Any demonstration project implemented under this chapter shall not include the adoption or waiver of regulations or statutes that are administered or enforced by the Department of

Personnel Administration without the express approval of the Department of Personnel Administration.

SEC. 25. Section 19702.7 is added to the Government Code, to read:

19702.7. (a) Effective June 1, 1998, notwithstanding Section 19702, this section shall apply only to state employees in State Bargaining Unit 19.

(b) A person shall not be discriminated against under this part because of sex, race, religious creed, color, national origin, ancestry, marital status, physical disability, or mental disability. A person shall not be retaliated against because he or she has opposed any practice made an unlawful employment practice, or made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. For purposes of this article, "discrimination" includes harassment. This subdivision is declaratory of existing law.

(c) As used in this section, "physical disability" includes, but is not limited to, impairment of sight, hearing, or speech, or impairment of physical ability because of amputation or loss of function or coordination, or any other health impairment that requires special education or related services.

(d) As used in this section, "mental disability" includes, but is not limited to, any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(e) Notwithstanding subdivisions (c) and (d), if the definition of disability used in the Americans with Disabilities Act of 1990 (Public Law 101-336) would result in broader protection of the civil rights of individuals with a mental disability or physical disability, as defined in subdivision (c) or (d), then that broader protection shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of, the definitions in subdivisions (c) and (d). The definitions of subdivisions (c) and (d) shall not be deemed to refer to or include conditions excluded from the federal definition of "disability" pursuant to Section 511 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12211).

(f) If the board finds that a person has engaged in discrimination under this part, and it appears that this practice consisted of acts described in Section 243.4, 261, 262, 286, 288, 288a, or 289 of the Penal Code, the board, with the consent of the complainant, shall provide the local district attorney's office with a copy of its decision and order.

(g) If the board finds that discrimination has occurred in violation of this part, the board shall issue and cause to be served on the appointing authority an order requiring the appointing authority to cause the discrimination to cease and desist and to take any action, including, but not limited to, hiring, reinstatement, or upgrading of employees, with or without backpay, adding additional seniority, and compensatory damages, which, in the judgment of the board, will

effectuate the purposes of this part. Consistent with this authority, the board may establish rules governing the award of compensatory damages. The order shall include a requirement of reporting the manner of compliance.

(h) Any person claiming discrimination within the state civil service may submit a complaint that shall be in writing and set forth the particulars of the alleged discrimination, the name of the appointing authority, the persons alleged to have committed the unlawful discrimination, and any other information that may be required by the board. The complaint shall be filed with the appointing authority or, in accordance with board rules, with the board itself.

(i) Complaints shall be filed within one year of the alleged unlawful discrimination or the refusal to act in accordance with this section, except that this period may be extended for not to exceed 90 days following the expiration of that year, if a person allegedly aggrieved by unlawful discrimination first obtained knowledge of the facts of the alleged unlawful discrimination after the expiration of one year from the date of its occurrence. Complaints of discrimination in minor disciplinary actions defined in Section 19576.4 shall be filed in accordance with that section. Complaints of discrimination in all other disciplinary actions shall be filed in accordance with Section 19575. Complaints of discrimination in rejections on probation shall be filed in accordance with Section 19175.5.

(j) (1) When an employee of the appointing authority refuses, or threatens to refuse, to cooperate in the investigation of a complaint of discrimination, the appointing authority may seek assistance from the board. The board may provide for direct investigation or hearing of the complaint, the use of subpoenas, or any other action which will effect the purposes of this section.

(2) This subdivision shall not apply to complaints of discrimination filed in accordance with Section 19576.4.

SEC. 26. Section 19786.2 is added to the Government Code, to read:

19786.2. (a) Notwithstanding Section 19786, this section shall apply only to state employees in State Bargaining Unit 19.

(b) When a civil service employee has been reinstated after military service in accordance with Section 19780, and any question arises relative to his or her ability or inability for any reason arising out of the military service to perform the duties of the position to which he or she has been reinstated, the board shall, upon the request of the appointing power or of the employee, hear the matter and may on its own motion or at the request of either party take any and all necessary testimony of every nature necessary to a decision on the question.

(c) If the board finds that the employee is not able for any reason arising out of the military service to carry out the usual duties of the position he or she then holds, it shall order the employee placed in

a position in which the board finds he or she is capable of performing the duties in the same class or a comparable class in the same or any other state department, bureau, board, commission, or office under this part and the rules of the board covering transfer of an employee from a position under the jurisdiction of one appointing power to a position under the jurisdiction of another appointing power, without the consent of the appointing powers, where a vacancy may be made available to him or her under this part and the rules of the board, but in no event shall the transfer constitute a promotion within the meaning of this part and the rules of the board.

(d) If a layoff is made necessary to place a civil service employee in a position in the same class or a comparable class in accordance with this section, the layoff shall be made under Section 19997.43.

(e) The board may order the civil service employee reinstated to the department, bureau, board, commission, or office from which he or she was transferred either upon request of the employee or the appointing power from which transferred. The reinstatement may be made after a hearing as provided in this section if the board finds that the employee is at the time of the hearing able to perform the duties of the position.

SEC. 27. Section 19798.2 is added to the Government Code, to read:

19798.2. Section 19798 does not apply to state employees in State Bargaining Unit 19.

SEC. 28. Section 19815.42 is added to the Government Code, to read:

19815.42. (a) Notwithstanding subdivision (e) of Section 19815.4, this section shall apply only to state employees in State Bargaining Unit 19.

(b) The director shall hold nonmerit statutory appeal hearings, subpoena witnesses, administer oaths, and conduct investigations in accordance with Department of Personnel Administration Rule 599.859 (b)(2).

(c) The director may, at his or her discretion, hold hearings, subpoena witnesses, administer oaths, or conduct investigations or appeals concerning other matters relating to the department's jurisdiction.

(d) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 29. Section 19816.22 is added to the Government Code, to read:

19816.22. Section 19816.2 does not apply to state employees in State Bargaining Unit 19.

SEC. 30. Section 19816.23 is added to the Government Code, to read:

19816.23. (a) Notwithstanding Section 18717, this section shall apply only to state employees in State Bargaining Unit 19.

(b) The department shall determine which classes or positions meet the elements of the criteria for the state safety category of membership in the Public Employees' Retirement System. An employee organization or employing agency requesting a determination from the department shall provide the department with information and written argument supporting the request.

(c) The department may use the determination findings in subsequent negotiations with the exclusive representatives.

(d) The department shall not approve safety membership for any class or position that has not been determined to meet all of the following criteria:

(1) In addition to the defined scope of duties assigned to the class or position, the member's ongoing responsibility includes:

(A) The protection and safeguarding of the public and of property.

(B) The control or supervision of, or a regular, substantial contact with one of the following:

(i) Inmates or youthful offenders in adult or youth correctional facilities.

(ii) Patients in state mental facilities that house Penal Code offenders.

(iii) Clients charged with a felony who are in a locked and controlled treatment facility of a developmental center.

(2) The conditions of employment require that the member be capable of responding to emergency situations and provide a level of service to the public such that the safety of the public and of property is not jeopardized.

(e) For classes or positions that are found to meet this criteria, the department may agree to provide safety membership by a memorandum of understanding reached pursuant to Section 3517.5 if the affected employees are subject to collective bargaining. The department shall notify the retirement system of its determination, as prescribed in Section 20405.3.

(f) Notwithstanding Section 7550.5, the department shall prepare and submit an annual report to the Legislature that lists the classes or positions which were found to be eligible for safety membership under this section.

SEC. 31. Section 19817.8 is added to the Government Code, to read:

19817.8. This article applies only with respect to regulations that apply to state employees in State Bargaining Unit 19.

SEC. 32. Section 19818.9 is added to the Government Code, to read:

19818.9. (a) Notwithstanding Section 19818.6, this section shall apply only to state employees in State Bargaining Unit 19.

(b) The department shall administer the Personnel Classification Plan of the State of California including the allocation of every position to the appropriate class in the classification plan. The allocation of a position to a class shall derive from and be determined by the ascertainment of the duties and responsibilities of the position and shall be based on the principle that all positions that meet the definition of a class pursuant to Section 18523.3 shall be included in the same class.

(c) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of the memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(d) A broadband project may not change the terms and conditions of employment covered by a memorandum of understanding entered into pursuant to the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1), unless there is a written agreement with respect to the project between the department and the recognized employee organization representing the affected employees.

SEC. 33. Section 19818.15 is added to the Government Code, to read:

19818.15. (a) This section shall apply only to state employees in State Bargaining Unit 19.

(b) The department may, directly or through agreement or contract with one or more agencies, conduct demonstration classification, compensation, and related projects. "Demonstration project", for the purposes of this section, means a project that uses alternative classification, compensation, and other personnel management policies and procedures to determine if a change would result in cost savings, improved efficiency, or both cost savings and improved efficiency in the existing personnel management system.

(c) Nothing in this section shall infringe upon or conflict with the merit principles as embodied in Article VII of the California Constitution.

(d) The establishment of a demonstration project shall not be limited by the lack of specific authority in this division or by the existence of any statute or regulation that is inconsistent with actions to be taken in the demonstration project.

(e) Prior to implementation of a demonstration project, the department shall adopt regulations specifying the impact of the project on employee status, compensation, benefits, and rights with regard to transfer, layoff, promotion, and demotion. These regulations are not subject to the Administrative Procedure Act

(Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3), and shall automatically expire after five years from the date of adoption or at the end of the demonstration project, whichever is earlier. Nothing in this section shall affect the rights of employees included within demonstration projects, except those rights directly pertaining to the subject matter of the demonstration project.

(f) The department shall notify each house of the Legislature when a demonstration project is undertaken. The department shall also evaluate each project at its conclusion and notwithstanding Section 7550.5, shall prepare and submit a summary of the evaluation to each house of the Legislature that includes a discussion of the following:

(1) The purpose of the demonstration project that specifically states the goals or objectives of the project.

(2) The cost projections and methods by which savings, if any, may be calculated.

(3) A definitive mechanism by which the value and success, if any, of the demonstration project may be quantified as feasible. This mechanism shall include specific numerical objectives that must be met or exceeded if a demonstration project is to be judged successful.

(g) A demonstration project may not change the terms and conditions of employment covered by a memorandum of understanding entered into pursuant to the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1), unless there is a written agreement with respect to the project between the department and the recognized employee organization representing the affected employees.

(h) Any demonstration project implemented under this section shall not include the adoption or waiver of regulations or statutes that are administered or enforced by the State Personnel Board without the express approval of the State Personnel Board.

SEC. 34. Section 19826.3 is added to the Government Code, to read:

19826.3. (a) Notwithstanding Section 19826, effective June 1, 1998, this section shall apply only to state employees in State Bargaining Unit 19.

(b) The department shall establish and adjust salary ranges or rates for each class of position in the state civil service subject to any merit limits contained in Article VII of the California Constitution. The salary range or rate shall be based on the principle that like salaries shall be paid for comparable duties and responsibilities. In establishing or changing these ranges or rates, consideration shall be given to the prevailing rates for comparable service in other public employment and in private business. The department shall make no adjustments that require expenditures in excess of existing

appropriations that may be used for salary increase purposes. The department may make a change in salary range or rate retroactive to the date of application for the change.

(c) Notwithstanding any other provision of law, the department shall not establish, adjust, or recommend a salary range or rate for any employees in an appropriate unit where an employee organization has been chosen as the exclusive representative pursuant to Section 3520.5.

(d) Notwithstanding Section 7550.5, on or before January 10 of each year, the department shall prepare and submit to the parties meeting and conferring pursuant to Section 3517 and to the Legislature, a report containing the department's findings relating to the salaries of employees in comparable occupations in private industry and other governmental agencies.

(e) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 35. Section 19828.2 is added to the Government Code, to read:

19828.2. Effective June 1, 1998, Section 19828 does not apply to state employees in State Bargaining Unit 19.

SEC. 36. Section 19829.2 is added to the Government Code, to read:

19829.2. (a) Effective June 1, 1998, notwithstanding Section 19829, this section shall apply only to state employees in State Bargaining Unit 19.

(b) Salary ranges shall consist of minimum and maximum salary limits. Except where otherwise provided by law, the appointing power or designee, consistent with the regulations of the department, shall determine the employee's salary rate upon appointment and may authorize subsequent increases in these rates based on considerations including, but not limited to, recruitment and retention, extraordinary qualifications, and successful job performance or promotion. Only those employees who are performing successfully as determined by the appointing power or designee shall receive periodic performance salary adjustments until the maximum of the salary range is reached to recognize continuous successful performance or value to the organization. Adjustments within the salary range authorized in this section may be either temporary or permanent. The department may establish more than one salary range or rate or method of compensation within a class.

(c) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be

controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 37. Section 19832.2 is added to the Government Code, to read:

19832.2. (a) Effective June 1, 1998, notwithstanding Section 19832, this section shall apply only to state employees in State Bargaining Unit 19.

(b) Employees whose salary is not at the maximum of the salary range shall be considered for a performance salary adjustment at least annually. Only those employees who are performing successfully as determined by the appointing power shall receive performance salary adjustments until the maximum of the salary range is reached to recognize continuous successful performance. The employee's salary rate may not exceed the maximum of the salary range or fall below the minimum of the salary range except where otherwise provided by law or department rules.

(c) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 38. Section 19834.2 is added to the Government Code, to read:

19834.2. Effective June 1, 1998, Section 19834 does not apply to state employees in State Bargaining Unit 19.

SEC. 39. Section 19835.2 is added to the Government Code, to read:

19835.2. Effective June 1, 1998, Section 19835 does not apply to state employees in State Bargaining Unit 19.

SEC. 40. Section 19836.3 is added to the Government Code, to read:

19836.3. (a) Effective June 1, 1998, notwithstanding Section 19836, this section shall apply only to state employees in State Bargaining Unit 19.

(b) The appointing power or designee with the approval of the department may authorize payment at any step above the minimum salary limit to classes or positions in order to correct salary inequities.

(c) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 41. Section 19841.2 is added to the Government Code, to read:

19841.2. (a) Notwithstanding Section 19841, this section shall apply only to state employees in State Bargaining Unit 19.

(b) Notwithstanding Section 11030, whenever a state officer or employee is required by the appointing power because of a change in assignment, promotion, or other reason related to his or her duties to change his or her place of residence, the officer, agent, or employee shall receive his or her actual and necessary moving, traveling, lodging, and meal expenses incurred by him or her both before and after and by reason of the change of residence. The maximum allowances for these expenses shall be as follows: the costs of packing, transporting, and unpacking 11,000 pounds of household effects, traveling, lodging, and meal expenses for 60 days while locating a permanent residence, storage of household effects for 60 days, and additional miscellaneous allowances not in excess of two hundred dollars ($200). The maximum allowances may be exceeded where the director determines that the change of residence will result in unusual and unavoidable hardship for the officer or employee, and in those cases the director shall determine the maximum allowances to be received by the officer or employee.

(c) If a change of residence reasonably requires the sale of a residence or the settlement of an unexpired lease, the officer or employee may be reimbursed for any of the following expenses:

(1) The settlement of the unexpired lease to a maximum of one year. Upon the date of surrender of the premises by the employee who is the lessee, the rights and obligations of the parties to the lease shall be as determined by Section 1951.2 of the Civil Code.

The state shall be absolved of responsibility for an unexpired lease if the department determines the employee knew or reasonably should have known that a transfer involving a physical move was imminent before entering into the lease agreement.

(2) In the event of residence sale, reimbursement for brokerage and other related selling fees or charges, as determined by regulations of the department, customarily charged for like services in the locality where the residence is located.

(d) If the change of residence is caused by a layoff, the application of this section shall be at the discretion of the department based upon the recommendation of the appointing power.

(e) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 42. Section 19853.3 is added to the Government Code, to read:

19853.3. (a) Notwithstanding Section 19853, this section shall apply only to state employees in State Bargaining Unit 19.

(b) Except as provided in subdivision (c), all employees shall be entitled to the following holidays: January 1, the third Monday in January, the third Monday in February, the last Monday in May, July 4, the first Monday in September, November 11, the day after Thanksgiving, December 25, and every day appointed by the Governor of this state for a public fast, Thanksgiving, or holiday.

When a day herein listed falls on a Sunday, the following Monday shall be deemed to be the holiday in lieu of the day observed. If November 11 falls upon a Saturday, the preceding Friday shall be deemed to be the holiday in lieu of the day observed. Any employee who may be required to work on any of the holidays mentioned in this section and who does work on any of these holidays shall be entitled to be paid compensation or given compensating time off for that work in accordance with his or her classification's assigned workweek group.

(c) If the provisions of subdivision (b) are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, 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.

(d) Any employee who either is excluded from the definition of state employee in subdivision (c) of Section 3513, or is a nonelected officer or employee of the executive branch of government who is not a member of the civil service, is entitled to the following holidays, with pay, in addition to any official state holiday appointed by the Governor:

(1) January 1, the third Monday in January, the third Monday in February, the last Monday in May, July 4, the first Monday in September, November 11, Thanksgiving Day, the day after Thanksgiving, December 25.

(2) When November 11 falls on a Saturday, employees shall be entitled to the preceding Friday as a holiday with pay.

(3) When a holiday, other than a personal holiday, falls on a Saturday, an employee shall, regardless of whether he or she works on the holiday, accrue only an additional eight hours of personal holiday credit per fiscal year for the holiday. The holiday credit shall be accrued on the actual date of the holiday and shall be used within the same fiscal year.

(4) When a holiday other than a personal holiday falls on Sunday, employees shall be entitled to the following Monday as a holiday with pay.

(5) Employees who are required to work on a holiday shall be entitled to pay or compensating time off for this work in accordance with their classifications' assigned workweek group.

(6) Persons employed on less than a full-time basis shall receive holidays in accordance with the Department of Personnel Administration rules.

(e) Any employee, as defined in subdivision (c) of Section 3513, may elect to use eight hours of vacation, annual leave, or compensating time off consistent with departmental operational needs and collective bargaining agreements for March 31, known as "Cesar Chavez Day."

(f) This section shall become effective only when the Department of Personnel Administration notifies the Legislature that the language contained in this section has been agreed to by all the parties, and the necessary statutes are amended to reflect this change for employees excluded from the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512), Division 4, Title 1).

SEC. 43. Section 19854.2 is added to the Government Code, to read:

19854.2. (a) Section 19854 does not apply to state employees in State Bargaining Unit 19.

(b) Subdivision (a) shall become effective only when the Department of Personnel Administration notifies the Legislature that the language contained in that subdivision has been agreed to by all the parties, and the necessary statutes are amended to reflect this change for employees excluded from the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512), Division 4, Title 1).

SEC. 44. Section 19994.6 is added to the Government Code, to read:

19994.6. (a) Notwithstanding Section 19994, this section shall apply only to state employees in State Bargaining Unit 19.

(b) When the state takes over and there is transferred to it a function from any other public agency, the department may determine the extent, if any, to which the employees employed by the other public agency on the date of transfer are entitled to have credited to them in the state civil service, seniority credits, accumulated sick leave, and accumulated vacation because of service with the former agency.

(c) The department shall limit that determination to the time any transferred employees were employed in the specific function or a function substantially similar while in the former agency and the seniority credits and accumulated sick leave and accumulated vacation shall not exceed that to which each employee would be entitled if he or she had been continuously employed by the State of California. This section is applicable to any function heretofore transferred to the state, whether by state action or otherwise, as well as to any future transfers of a function to the state, whether by state action or otherwise.

SEC. 45. Section 19994.7 is added to the Government Code, to read:

19994.7. (a) Notwithstanding Section 19994.1, this section shall apply only to state employees in State Bargaining Unit 19.

(b) An appointing power may transfer any employee under his or her jurisdiction: (1) to another position in the same class; or (2) from one location to another whether in the same position, or in a different position as specified above in (1) or in Section 19050.5.

(c) When a transfer under this section or Section 19050.5 reasonably requires an employee to change his or her place of residence, the appointing power shall give the employee, unless the employee waives this right, a written notice of transfer 60 days in advance of the effective date of the transfer unless the transfer is in lieu of layoff, in which case the notice shall be 30 days in advance of the effective date of the transfer. Unless the employee waives this right, the written notice shall set forth in clear and concise language the reasons why the employee is being transferred.

(d) If this section is in conflict with a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the memorandum of understanding requires the expenditure of funds, it shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 46. Section 19994.8 is added to the Government Code, to read:

19994.8. (a) Notwithstanding Section 19994.2 this section shall apply only to state employees in State Bargaining Unit 19.

(b) When there are two or more employees in a class and an involuntary transfer is required to a position in the same class, or an appropriate class as designated by the State Personnel Board, in a location that reasonably requires an employee to change his or her place of residence, the department may determine the methods by which employees in the class or classes involved are to be selected for transfer. These methods may include seniority and other considerations, including special skills.

(c) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 47. Section 19997.40 is added to the Government Code, to read:

19997.40. Notwithstanding Section 19997, this section shall apply only to state employees in State Bargaining Unit 19. Whenever it is necessary because of lack of work or funds, or whenever it is advisable in the interests of economy, to reduce the staff of any state agency, the appointing power may lay off employees pursuant to this article and department rule.

SEC. 48. Section 19997.43 is added to the Government Code, to read:

19997.43. (a) Notwithstanding Section 19997.3, this section shall apply only to state employees in State Bargaining Unit 19.

(b) Layoff shall be made in accordance with the relative seniority of the employees in the class of layoff. In determining seniority scores, one point shall be allowed for each complete month of full-time state service regardless of when the service occurred. Department rules shall establish all of the following:

(1) The extent to which seniority credits may be granted for less than full-time service.

(2) The basis for determining the sequence of layoff whenever the class and subdivision of layoff includes employees whose service is less than full time.

(3) Any other matters as are necessary or advisable to the operation of this chapter.

(c) Less than full-time service shall be prorated.

(d) For professional, scientific, administrative, management, and executive classes, the department shall prescribe standards and methods by rule whereby employee efficiency shall be combined with seniority in determining the order of layoffs and the order of names on reemployment lists. These standards and methods may vary for different classes, and shall take into consideration the needs of state service and practice in private industry and other public employment.

(e) Prior to laying off, transferring, or demoting permanent or probationary employees, employment for other employees who did not formerly have permanent status shall be terminated in the following sequence: student assistants, retired annuitants, temporary intermittent, limited term, and permanent intermittent appointments. No distinction shall be made between a probationary and permanent employee or between full-time and part-time employees when making layoffs. For layoff purposes employees on leaves of absences shall be treated the same as other employees.

(f) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding incurs either present or future costs, or requires the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 49. Section 19997.44 is added to the Government Code, to read:

19997.44. (a) Notwithstanding Section 19997.4, this section shall apply only to state employees in State Bargaining Unit 19.

(b) For the purposes of determining seniority pursuant to Section 19997.43, the term "state service" shall include service that is exempted from the state civil service by any of the following:

(1) Subdivision (e), (f), (g), (i), or (m) of Section 4 of Article VII of the California Constitution.

(2) Subdivision (a) of Section 4 of Article VII of the California Constitution if an employee provides to the appointing power a copy of his or her official employment history record by July 1, 1999, or within six months of appointment to the state civil service.

SEC. 50. Section 19997.45 is added to the Government Code, to read:

19997.45. Notwithstanding Section 19997.5, this section shall apply only to state employees in State Bargaining Unit 19. Separations that are necessary by reason of reinstatement of an employee or employees after recognized military service as provided for in Section 19780 shall be made by layoff. In making these separations, the regular method of determining the order of layoff shall be used.

SEC. 51. Section 19997.46 is added to the Government Code, to read:

19997.46. (a) Notwithstanding Section 19997.6, this section shall apply only to state employees in State Bargaining Unit 19.

(b) Seniority credit for recognized military service shall be computed as if it were service in the class to which the employee was first given permanent civil service or exempt appointment after his or her entry into the state service following recognized military service.

(c) A veteran, except a veteran who was reinstated from military leave, shall in the event of layoff receive a maximum of one year's seniority credit for recognized military service if the veteran entered the state service after discharge, the end of the national emergency, or the end of the state military emergency. For purposes of this subdivision, "recognized military service" means service in a military campaign or expedition for which a medal was authorized by the government of the United States in accordance with Section 300.1 of Title 12 of the California Code of Regulations.

SEC. 52. Section 19997.47 is added to the Government Code, to read:

19997.47. (a) Notwithstanding Section 19998.7, this section shall apply only to state employees in State Bargaining Unit 19.

(b) Employees in the class under consideration, up to the number of positions to be abolished or discontinued, shall be laid off in the order as determined under this part. As between two or more employees who have the same score, veterans shall have preference in retention. Other ties shall be determined by lot.

SEC. 53. Section 19997.48 is added to the Government Code, to read:

19997.48. (a) Notwithstanding Section 19997.8, this section shall apply only to state employees in State Bargaining Unit 19.

(b) In lieu of being laid off an employee may elect demotion to: (1) any class with substantially the same or a lower maximum salary in which he or she had served under permanent or probationary status, or (2) a class in the same class series as the class of layoff, but of lesser responsibility, or (3) a class in a related line of work as the class of layoff, but of lesser responsibility, if such a class is designated by the department. Whenever a demotion requires a layoff in the elected class, the seniority score for the demoted employee shall be recomputed in that class if necessary. The appointing power shall inform the employee in the notice of layoff of the classes to which he or she has the right to demote. To be considered for demotion in lieu of layoff an employee must notify his or her appointing power in writing of his or her election not later than five calendar days after receiving notice of layoff.

(c) Demotions in lieu of layoff, and layoffs resulting therefrom, shall be governed by this article and shall be made within the subdivisions approved by the department for this purpose. These subdivisions need not be the same as those used to determine the area of layoff under Section 19997.2.

(d) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 54. Section 19997.51 is added to the Government Code, to read:

19997.51. (a) Notwithstanding Section 19997.11, this section shall apply only to state employees in State Bargaining Unit 19.

(b) The names of employees to be laid off, demoted in lieu of layoff, or transferred in lieu of layoff shall be placed upon the reemployment list for the subdivision, if such a subdivision was designated and upon the departmental reemployment list, for the class from which the employees were laid off, demoted in lieu of layoff, or transferred in lieu of layoff. The department shall also place these names upon the general reemployment list only for the entry level class within the employee's primary demotional pattern. This general reemployment list shall be a rule of one name.

(c) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 55. Section 19997.53 is added to the Government Code, to read:

19997.53. (a) Notwithstanding Section 19997.13, this section shall apply only to state employees in State Bargaining Unit 19.

(b) An employee compensated on a monthly basis shall be notified that he or she is to be laid off 30 days prior to the effective date of layoff. The notice of layoff shall be in writing and shall contain the reason or reasons for the layoff. An employee to be laid off may elect to accept this layoff prior to the effective date thereof.

(c) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 56. Section 20037.5 is added to the Government Code, to read:

20037.5. Notwithstanding Section 20035, "final compensation" for a state member who has elected to be subject to Section 21353.5, for the purposes of determining any pension or benefit based on service credited under that section, means the highest average annual compensation earnable by the member during the consecutive 36-month period immediately preceding the effective date of his or her retirement, or the date of his or her last separation from state service if earlier, or during any other period of 36 consecutive months during his or her state membership that the member designates on the application for retirement.

SEC. 57. Section 20068.2 is added to the Government Code, to read:

20068.2. (a) Notwithstanding Section 20068, this section shall apply only to state employees in State Bargaining Unit 19.

(b) "State safety service" means service rendered as a state safety member only while receiving compensation for that service, except as provided in Article 4 (commencing with Section 20990) of Chapter 11. It also includes service rendered in an employment in which persons have since become state safety members and service rendered prior to April 1, 1973, and falling within the definition of warden, forestry, and law enforcement service under this chapter prior to April 1, 1973. "State safety service" pursuant to this subdivision does not include service as an investigator prior to April 1, 1973, within the Department of Justice of persons who prior to April 1, 1973, were classed as miscellaneous members.

(c) "State safety service" with respect to a member who becomes a state safety member pursuant to Section 20405 shall also include service prior to the date on which he or she becomes a state safety member as an officer or employee of the Board of Prison Terms,

Department of Corrections, Prison Industry Authority, or the Department of the Youth Authority.

(d) "State safety service" with respect to a member who becomes a state safety member pursuant to Sections 20409 and 20410 shall also include service in a class specified in these sections or service pursuant to subdivision (a), prior to September 27, 1982.

(e) "State safety service," with respect to a member who becomes a state safety member pursuant to Sections 20414 and 20415, shall also include service prior to September 22, 1982, as an officer or employee of the Department of Parks and Recreation or the Military Department.

(f) "State safety service" does not include service in classes specified in Section 20407 prior to January 1, 1989.

(g) "State safety service" does not include service in classes specified in Section 20408 prior to January 1, 1990.

(h) "State safety service," with respect to a member who becomes a state safety member pursuant to subdivision (b) of Section 20405.3, shall also include service rendered in an employment in which persons have since become state safety members, as determined by the Department of Personnel Administration pursuant to that section.

SEC. 58. Section 20405.3 is added to the Government Code, to read:

20405.3. (a) Notwithstanding Section 20405, this section shall apply only to state employees in State Bargaining Unit 19.

(b) On and after the effective date of this section, state safety members shall also include officers and employees whose classifications or positions are found to meet the state safety criteria prescribed in Section 19816.23, provided the Department of Personnel Administration agrees to their inclusion. The effective date of safety membership shall be the date on which the department and the employees' exclusive representative reach agreement by memorandum of understanding pursuant to Section 3517.5.

(c) The department shall notify the board as new classes or positions become eligible for state safety membership, as specified in subdivision (a), and specify how service prior to the effective date shall be credited.

(d) Notwithstanding Section 7550.5, the department shall prepare and submit to the Legislature an annual report that contains the classes or positions that are eligible for state safety membership under this section.

(e) Any person designated as a state safety member pursuant to this section may elect, within 90 days of notification by the board, to remain subject to the miscellaneous or industrial service retirement benefit and contribution rate by filing an irrevocable election with the board. A member who so elects shall be subject to the reduced benefit factors specified in Section 21076 or Section 21353 only for service also included in the federal system.

SEC. 59. Section 20677 of the Government Code is amended to read:

20677. (a) (1) The normal rate of contribution for a state miscellaneous member whose service is not included in the federal system shall be 6 percent of the compensation in excess of three hundred seventeen dollars ($317) per month paid that member for service rendered on and after July 1, 1976. The normal rate of contribution for a school member, or a local miscellaneous member shall be 7 percent of the compensation paid that member for service rendered on and after June 21, 1971.

(2) The normal rate of contribution for a state miscellaneous or industrial member, who has elected to be subject to Section 21353.5 and whose service is not included in the federal system, shall be 6 percent of the member's compensation.

(3) The normal rate of contribution as established under this subdivision for a member whose service is included in the federal system, and whose service retirement allowance is reduced under Section 21353, 21353.5, or Section 21354 because of that inclusion, shall be reduced by one-third as applied to compensation not exceeding four hundred dollars ($400) per month for service after the date of execution of the agreement including service in the federal system and prior to termination of the agreement with respect to the coverage group to which he or she belongs.

(b) (1) The normal rate of contribution for a state miscellaneous member whose service has been included in the federal system shall be 5 percent of compensation in excess of five hundred thirteen dollars ($513) per month paid that member for service rendered on and after July 1, 1976.

(2) The normal rate of contribution for a state miscellaneous or industrial member, who has elected to be subject to Section 21353.5 and whose service has been included in the federal system, shall be 5 percent of compensation, subject to the reduction specified in paragraph (3) of subdivision (a).

(c) The normal rate of contribution for a state miscellaneous or industrial member who elects to become subject to Section 21076 or Section 21077 shall be 0 percent, unless the member subsequently elects to become subject to Section 21353, as authorized by subdivision (c) of Section 21070 or Section 21353.5. A member who elects to become subject to Section 21353 shall contribute at the rate specified in paragraph (1) of subdivision (a) or paragraph (1) of subdivision (b), as determined by the member's status with the federal system, and the rate shall be applied from the first of the month following the date of the election. A member who makes the election shall also contribute for service prior to the date the contribution rate was applied, in the manner specified in Section 21073. A member who elected to become subject to Section 21353 solely for service rendered on or after the effective date of the election, as authorized by subdivision (c) of Section 21070 during the

period between November 1, 1988, and October 31, 1989, is not required to make the contributions specified in Section 21073.

SEC. 60. Section 20963 of the Government Code is amended to read:

20963. A state, school, or school safety member, whose effective date of retirement is within four months of separation from employment with the employer subject to this section that granted the sick leave credit, shall be credited at his or her retirement with 0.004 year of service credit for each unused day of sick leave certified to the board by the employer. The certification shall report only those days of unused sick leave that were accrued by the member during the normal course of his or her employment and shall not include any additional days of sick leave reported for the purpose of increasing the member's retirement benefit. Reports of unused days of sick leave shall be subject to audit and retirement benefits may be adjusted where improper reporting is found.

Until receipt of certification from an employer concerning unused sick leave, the board may pay an estimated allowance pursuant to this section. At the time of receipt of the certification, the allowance shall be adjusted to reflect any necessary changes.

Notwithstanding any other provisions of this part, this section shall not apply to local members other than local miscellaneous members employed before July 1, 1980, by a school district that is a contracting agency or those school safety members employed before July 1, 1980, by a contracting agency that is a school district or community college district, as defined in subdivision (i) of Section 20057.

This section shall not be applicable to (a) any person who becomes a school member on and after July 1, 1980, and any person who becomes a local member employed, on and after July 1, 1980, by a school district that is a contracting agency whether or not the person was ever a school member or local member prior to that date, or (b) a state employee, with respect to sick leave credits earned as a state member under Section 21353.5, except that the member shall be entitled to receive credit under this section for the sick leave he or she has earned as a state member subject to any other retirement formula, provided the member has a sick leave credit balance remaining at the time of retirement.

For the purposes of this section, sick leave benefits provided to state employees pursuant to the state sick leave system shall be construed to mean compensation paid to employees on approved leaves of absence on account of sickness.

SEC. 61. Section 21071 of the Government Code is amended to read:

21071. (a) Notwithstanding any other provision of this article, except as provided in subdivisions (b) and (c), persons who first become state miscellaneous or state industrial members of the system on or after July 1, 1991, and who are : (1) excluded from the definition of state employee in subdivision (c) of Section 3513; (2) employed by

the executive branch of government who are not members of the civil service; or (3) included in the definition of state employee in subdivision (c) of Section 3513 shall become subject to Section 21076.

(b) Any person who was a member on or before June 30, 1991, eligible to elect membership on or before June 30, 1991, or who was employed in any position on or before June 30, 1991, that would lead to membership as a state member, as defined in Section 20370, and who thereafter enters employment subject to Section 21076 shall be granted the rights provided in subdivision (c) of Section 21070, unless the person had earlier made an irrevocable election to be subject to Section 21076 or 21077. The one-year period in which to make the election provided in subdivision (c) of Section 21070 for any member who became a state member prior to January 1, 1994, shall commence with the mailing of a notice by the system to the member, of his or her election right. The effective date of the election shall be the date on which the member became a state miscellaneous or state industrial member. The member shall be obligated to make the contributions specified in Section 20677.

(c) Effective on or after April 1, 1998, state miscellaneous or industrial members may elect to be subject to the service retirement formula prescribed in Section 21353.5, as an alternative to Second Tier membership under Section 21076. The election shall be provided to eligible members by the appointing authority, and, to be effective, an election must be filed with the board. Eligible members who must be in the employment of the state are defined as members in state bargaining units for which a memorandum of understanding has been agreed to by the state employer and the recognized employee organization to become subject to Section 21353.5. The effective date of a member's election shall be the first day of the month following the date the election is filed with the system.

(d) This section shall not apply to state miscellaneous members employed by the California State University or employees described in Section 20324.

SEC. 62. Section 21073.5 is added to the Government Code, to read:

21073.5. A state Second Tier member, who meets the eligibility definition prescribed in subdivision (c) of Section 21071 may elect to be subject to Section 21353.5 at any time while he or she is in the employment of the state. Upon becoming subject to Section 21353.5, the active member may elect to have his or her past Second Tier service credited under Section 21353.5. A member who elects to receive credit for past service shall pay all reasonable administrative costs and the amount that will be equivalent to the difference between the actuarial present value of the Second Tier service that had accrued to the member's credit and the actuarial present value for the same service had it been credited under Section 21353.5, including interest if deemed necessary, in accordance with the method to be established by the board. The amount shall be

contributed in a lump sum or by installments over a period and subject to minimum payments as may be prescribed by regulations of the board. Payments for administrative costs shall be credited to the current appropriation for support of the board and available for expenditures by the board to fund positions deemed necessary by the board to implement this section.

SEC. 63. Section 21073.6 is added to the Government Code, to read:

21073.6. (a) The election provided to eligible members pursuant to subdivision (c) of Section 21071, to be subject to the service retirement formula prescribed in Section 21353.5, shall be subject to conditions to be established and communicated by the board.

(b) The election provided to eligible members pursuant to Section 21073.5, to have the member's past Second Tier service credited under Section 21353.5, shall first be available no earlier than January 1, 1999, subject to the election procedures to be established and communicated by the board.

(1) Notwithstanding Section 21073.5 which limits to active members the election provided pursuant to Section 21353.5, this election shall also be provided to a member who retired between the date he or she became eligible under subdivision (c) of Section 21071 and the date the election was actually made available by the board.

(2) Notwithstanding Section 21073.5 which limits to active members the election provided pursuant to Section 21353.5, this election shall also be provided to the beneficiary eligible for a continuing allowance upon the death of a member, provided the member had been determined to be eligible under subdivision (c) of Section 21071 but had died before making the election that would have been provided by the board.

(3) The election provided under paragraph (1) or (2) shall be made within 60 days of the mailing date on the election notice sent by the board to the retired member or the member's beneficiary.

SEC. 64. Section 21353.5 is added to the Government Code, to read:

21353.5. The combined current and prior service pensions for a state miscellaneous or industrial member who has elected to be subject to the service retirement formula prescribed in this section, as provided by Sections 21071 and 21073.5, is a pension derived from the contributions of the employer sufficient, when added to the service retirement annuity that is derived from the accumulated normal contributions of the member at the date of retirement, to equal the fraction of one-fiftieth of the member's final compensation set forth opposite the member's age at retirement, taken to the preceding completed quarter year, in the following table, multiplied by the number of years of current and prior service, except service in a category of membership other than that credited under this section, with which the member is entitled to be credited at retirement:

Age of Retirement	Fraction
50	.546
50 1/4	.554
50 1/2	.562
50 3/4	.570
51	.578
51 1/4	.586
51 1/2	.595
51 3/4	.603
52	.612
52 1/4	.621
52 1/2	.630
52 3/4	.639
53	.648
53 1/4	.658
53 1/2	.668
53 3/4	.678
54	.688
54 1/4	.698
54 1/2	.709
54 3/4	.719
55	.730
55 1/4	.741
55 1/2	.753
55 3/4	.764
56	.776
56 1/4	.788
56 1/2	.800
56 3/4	.813
57	.825
57 1/4	.839
57 1/2	.852
57 3/4	.865
58	.879
58 1/4	.893
58 1/2	.908
58 3/4	.923
59	.937
59 1/4	.953
59 1/2	.969

$59^3/_4$	.985
60 and over	1.000

The fractions specified in the above table shall be reduced by one-third as applied to that part of final compensation which does not exceed four hundred dollars ($400) per month for all service of a member any of whose service has been included in the federal system.

The retirement allowance provided by this section, which shall be effective for members who retire on and after April 1, 1998, is granted subject to future reduction prior to a member's retirement, by offset of federal system benefits or otherwise, as the Legislature may from time to time deem appropriate because of changes in such federal system benefits.

SEC. 65. Section 21423 of the Government Code is amended to read:

21423. The disability retirement pension, for service subject to Section 21353, for a member whose effective date of retirement is on or after the operative date of the amendments to this section at the 1972 Regular Session, or for service subject to Section 21353.5, for a member whose effective date of retirement is on or after the operative date of the amendments to this section at the 1997–98 Regular Session, shall be such an amount as with that portion of his or her annuity provided by his or her accumulated normal contributions, will make his or her disability retirement allowance equal:

(a) Ninety percent of one-fiftieth of his or her final compensation multiplied by the number of years of service credited to him or her.

(b) If the disability retirement allowance computed under subdivision (a) does not exceed one-third of his or her final compensation, 90 percent of one-fiftieth of his final compensation multiplied by the number of years of service which would be creditable to him or her were his or her service to continue until attainment by him or her of age 60, but in that case the retirement allowance shall not exceed one-third of final compensation.

Subdivision (b) is not applicable to members who are not entitled, at the time of retirement, to be credited with at least 10 years of state service.

SEC. 66. Section 22013.82 is added to the Government Code, to read:

22013.82. "Policeman" as used in this part also includes persons employed in classifications listed in Section 20405.3, if that designation is not contrary to any definition, ruling, or regulation relating to the term "policeman" issued by the federal agency for the purposes of Section 218(d)(5)(A) of the Social Security Act.

SEC. 67. Section 22754.2 is added to the Government Code, to read:

22754.2. As used in this part the following definitions, unless the context otherwise requires, shall govern the interpretation of terms:

(a) "Board" means the Board of Administration of the Public Employees' Retirement System.

(b) "Employee" means:

(1) Any officer or employee of the State of California or of any agency, department, authority, or instrumentality of the state including the University of California, or any officer or employee who is a local or school member of the Public Employees' Retirement System employed by a contracting agency that has elected to be or otherwise has become subject to this part, or who is a member or retirant of the State Teachers' Retirement System employed by an employer who has elected to become subject to this part, or who is an employee or annuitant of a special district or county subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3) that has elected to become subject to this part, or who is an employee or annuitant of a special district, as defined in subdivision (i), that has elected to become subject to this part, except persons employed on an intermittent, irregular or less than half-time basis, or employees similarly situated, or employees in respect to whom contributions by the state for any type of plan or program offering prepaid hospital and medical care are otherwise authorized by law.

(2) Any officer or employee who participates in the retirement system of a contracting agency as defined in paragraph (2) of subdivision (g) that has elected to become subject to this part, except persons employed less than half time or who are otherwise determined to be ineligible.

(3) Any annuitant of the Public Employees' Retirement System employed by a contracting agency as defined in subdivision (g) that has elected to become subject to this part who is a person retired under Section 21228.

(4) Notwithstanding paragraph (1), "eligible employee" of the State of California, as it applies to state employees in State Bargaining Unit 19, means (A) a permanent employee appointed half time or more; (B) an employee who is a limited term or temporary authorization appointee who continues coverage based on prior continuous permanent status; (C) an employee who is in a half time or more limited-term appointment shall qualify after working six consecutive months; and (D) an employee appointed half time or more to a temporary appointment in lieu of a permanent appointment; and (E) a permanent intermittent employee who works a minimum of 480 hours in a six-month control period. All other limited-term, nonstatus employees as defined by the Department of Personnel Administration and temporary authorization employees are not eligible.

(c) "Carrier" means a private insurance company holding a valid outstanding certificate of authority from the Insurance

Commissioner of the state, a medical society or other medical group, a nonprofit hospital service plan qualifying under Chapter 11A (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code, or nonprofit membership corporation lawfully operating under Section 9200 or Section 9201 of the Corporations Code, or a health care service plan as defined under subdivision (f) of Section 1345 of the Health and Safety Code, or a health maintenance organization approved under Title XIII of the federal Public Health Services Act, which is lawfully engaged in providing, arranging, paying for, or reimbursing the cost of personal health services under insurance policies or contracts, medical and hospital service agreements, membership contracts, or the like, in consideration of premiums or other periodic charges payable to it.

(d) "Health benefits plan" means any program or entity that provides, arranges, pays for, or reimburses the cost of health benefits.

(e) "Annuitant" means:

(1) Any person who has retired within 120 days of separation from employment and who receives any retirement allowance under any state or University of California retirement system to which the state was a contributing party.

(2) A family member receiving an allowance as the survivor of an annuitant who has retired as provided in paragraph (1), or as the survivor of a deceased employee under Section 21541, 21546, or 21571 or similar provisions of any other state retirement system.

(3) Any employee who has retired under the retirement system provided by a contracting agency as defined in paragraph (2) of subdivision (g) and who receives a retirement allowance from that retirement system, or a surviving family member who receives the retirement allowance in place of the deceased.

(4) Any person who was a state member for 30 years or more and who, at the time of retirement, was a local member employed by a contracting agency.

(f) "Family member" means an employee's or annuitant's spouse and any unmarried child (including an adopted child, a stepchild, or recognized natural child who lives with the employee or annuitant in a regular parent-child relationship). The board shall, by regulation, prescribe age limits and other conditions and limitations pertaining to unmarried children.

(g) "Contracting agency" means:

(1) Any contracting agency as defined in Section 20022, any county or special district subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3), and any special district, school district, county board of education, personnel commission of a school district or a county superintendent of schools.

(2) Any public body or agency of, or within California not covered by the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3

(commencing with Section 31450) of Part 3 of Division 4 of Title 3), which provides a retirement system for its employees funded wholly or in part by public funds.

(h) "Employer" means the state, any contracting agency employing an employee, and any agency which has elected to become subject to this part pursuant to Section 22856.

(i) "Special district" means a nonprofit, self-governed public agency, within the State of California and comprised solely of public employees, performing a governmental rather than proprietary function.

SEC. 68. Section 22754.11 is added to the Government Code, to read:

22754.11. (a) Notwithstanding Section 22754, for state employees in State Bargaining Unit 19 and members of State Bargaining Unit 19 who retire on or after the effective date of this section and who meet the definition of annuitant, "eligible family member" means:

(1) The legal spouse in a marriage recognized by the state.

(2) A child under the age of 19 years who has never been married or who has obtained a legal annulment. This includes:

(A) The natural or adopted child, or stepchild of the employee or annuitant.

(B) A child, who is not the natural or adopted child, or stepchild of the employee or annuitant and who is not receiving or eligible for coverage through another source and who meets either of the following conditions:

(i) The employee or annuitant has legal or joint custody of the child.

(ii) The child is a grandchild living in the household of the employee or annuitant, and the natural parent or parents are not living in the same household.

(3) A child over the age of 19 years but under the age of 23 years who has never been married or who has obtained a legal annulment and meets the criteria of subparagraph (A) or (B) of paragraph (2) may continue to be enrolled if the child is one of the following:

(A) Enrolled on an ongoing basis as a college student for at least nine semester college units or equivalent quarter units.

(B) Enrolled on an ongoing basis in an adult continuation school curriculum that would result in high school diploma or its equivalent. An employee or annuitant whose child continues to be enrolled under this paragraph must provide the employer or benefit carrier with an annual certification of schooling or enrollment upon request.

(4) A child under the age of 19 years who has never been married or who has obtained a legal annulment may continue to be enrolled after attaining the age of 19 years if he or she is incapable of self-support because of physical disability or mental incapacity and he or she is dependent on the employee or annuitant for support and care. A disabled child may continue to be enrolled after attaining the

age of 19 years only if he or she was enrolled as disabled at the time of the employee's initial enrollment or became disabled while enrolled as an eligible family member prior to attaining the age of 19 years. The employee or annuitant must provide satisfactory evidence of the disability within 60 days after the disabled child attains the age of 19 years. Necessary documentation as prescribed by the employer must be completed, processed, and approved by the Public Employees' Retirement System. An annual certification of continued disability may be required.

(b) At the time of enrollment or audit, an employee or annuitant will be required to provide proof of eligibility for all enrolled family members that may include any of the following: (1) a valid marriage certificate, (2) a birth certificate, (3) a certification of disability, (4) legal custody documents, and (5) a copy of the employee's or annuitant's signed state income tax return.

SEC. 69. Section 22955.2 is added to the Government Code, to read:

22955.2. (a) Notwithstanding Sections 22953 and 22954, an employee in State Bargaining Unit 19 who becomes a state member of the Public Employees' Retirement System after July 1, 1998, and who is included in the definition of state employee in subdivision (c) of Section 3513 shall not receive any portion of the employer's contribution payable for annuitants, pursuant to Sections 22953 and 22954, unless the employee is credited with 10 years or more of state service, as defined by this section, at the time of retirement. This subdivision shall have retroactive application to state employees in State Bargaining Unit 19 who become a state member of the Public Employees' Retirement System after July 1, 1998, but prior to the effective date of the amendments to this section by the Legislature at the 1997–98 Regular Session.

(b) The percentage of employer's contribution amount payable for postretirement dental care benefits for an employee subject to this section shall be based on the funding provision of the plan and the member's completed years of state service at retirement as shown in the following table:

Credited Years of Service	Percentage of Employer Contribution
10	50
11	55
12	60
13	65
14	70
15	75
16	80

17	85
18	90
19	95
20	100

(c) This section shall only apply to state employees who retire for service.

(d) Benefits provided to an employee subject to this section shall be applicable to all future state service.

(e) For purposes of this section, "state service" means service rendered as an employee or an appointed or elected officer of the state for compensation. In those cases where the state assumes or has assumed from a public agency a function and the related personnel, service rendered by that personnel for compensation as employees or appointed or elected officers of that local public agency shall not be credited, at retirement, as state service for the purposes of this section, unless the former employer has paid or agreed to pay the state agency the amount actuarially determined to equal the cost for any employee dental benefits that were vested at the time that the function and the related personnel were assumed by the state. For noncontracting local public agencies the state department shall certify the completed years of local agency service to be credited to the employee to the Public Employees' Retirement System at the time of separation for retirement.

(f) Whenever the state contracts to assume a local public agency function, completed years of service rendered by the personnel for compensation as employees or appointed or elected officers of the local public agency shall be credited as state service only upon a finding by the Department of Finance that the contract contains a benefit factor sufficient to reimburse the state for the amount necessary to compensate the state fully for postretirement dental benefit costs for those personnel.

(g) This section shall not apply to employees of the California State University or the Legislature.

SEC. 70. Section 10295.3 is added to the Public Contract Code, to read:

10295.3. Notwithstanding any other provision of law, Section 10295 shall not apply to any contract entered into by the Department of Personnel Administration for state employees in State Bargaining Unit 19 for employee benefits, occupational health and safety, training services, or any combination thereof.

SEC. 71. Section 10344.3 is added to the Public Contract Code, to read:

10344.3. The Department of Personnel Administration, with respect to contracts entered into by the department for state employees in State Bargaining Unit 19 for employee benefits, occupational health and safety, training services, or any combination

thereof, shall provide all qualified bidders with a fair opportunity to enter the bidding process, therefore stimulating competition in a manner conducive to sound fiscal practices. The Department of Personnel Administration shall make available to any member of the public its guidelines for awarding these contracts, and to the extent feasible, implement the objectives set forth in Section 10351.

SEC. 72. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the provisions of this act relating to state employees may become effective at the earliest possible time, it is necessary that this act go into immediate effect.

CHAPTER 92

An act to amend Section 44015 of the Health and Safety Code, relating to air resources, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 3, 1998. Filed with Secretary of State July 3, 1998.]

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

SECTION 1. Section 44015 of the Health and Safety Code is amended to read:

44015. (a) A licensed smog check station shall not issue a certificate of compliance, except as authorized by this chapter, to any vehicle that meets the following criteria:

(1) A vehicle that has been tampered with.

(2) A vehicle that, prior to repairs, has been initially identified by the smog check station as a gross polluter. Certification of a gross polluting vehicle shall be conducted by a designated test-only facility, or a test-and-repair station that is both licensed and certified pursuant to Section 44014 and 44014.2 and is participating in the pilot program pursuant to subparagraph (B) of paragraph (2) of subdivision (g) of Section 44014.5.

(3) A vehicle described in subdivision (c).

(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance.

(c) (1) A repair cost waiver shall be issued, upon request of the vehicle owner, by an entity authorized to perform referee functions for a vehicle that has been properly tested but does not meet the applicable emission standards when it is determined that no adjustment or repair can be made that will reduce emissions from the

inspected motor vehicle without exceeding the applicable repair cost limit established under Section 44017 and that every defect specified by paragraph (2) of subdivision (a) of Section 43204, and by paragraphs (2) and (3) of subdivision (a) of Section 43205, has been corrected. A repair cost waiver issued pursuant to this paragraph shall be accepted in lieu of a certificate of compliance for the purposes of compliance with Section 4000.3 of the Vehicle Code. No repair cost waiver shall exceed two years' duration. No repair cost waiver shall be issued until the vehicle owner has expended an amount equal to the applicable repair cost limit specified in Section 44017.

(2) An economic hardship extension shall be issued, upon request of a qualified low-income motor vehicle owner, by an entity authorized to perform referee functions, for a motor vehicle that has been properly tested but does not meet the applicable emission standards when it is determined that no adjustment or repair can be made that will reduce emissions from the inspected motor vehicle without exceeding the applicable repair cost limit, as established pursuant to Section 44017.1, that every defect specified in paragraph (2) of subdivision (a) of Section 43204, and in paragraphs (2) and (3) of subdivision (a) of Section 43205, has been corrected, that the low-income vehicle owner would suffer an economic hardship if the extension is not issued, and that all appropriate emissions-related repairs up to the amount of the applicable repair cost limit in Section 44017.1 have been performed.

(d) No repair cost waiver or economic hardship extension shall be issued under any of the following circumstances:

(1) If a motor vehicle was issued a repair cost waiver or economic hardship extension in the previous biennial inspection of that vehicle. A repair cost waiver or economic hardship extension may be issued to a motor vehicle owner only once for a particular motor vehicle belonging to that owner. However, a repair cost waiver or economic hardship extension may be issued for a motor vehicle that participated in a previous waiver or extension program prior to January 1, 1998, as determined by the department. For waivers or extensions issued in the program operative on or after January 1, 1998, a waiver or extension may be issued for a motor vehicle only once per owner.

(2) Upon initial registration of all of the following: a direct import motor vehicle, a motor vehicle previously registered outside this state, a dismantled motor vehicle pursuant to Section 11519 of the Vehicle Code, a motor vehicle that has had an engine change, an alternate fuel vehicle, and a specially constructed vehicle.

(e) Unless the certificate is issued to a licensed automobile dealer, a certificate of compliance or noncompliance shall be valid for 90 days. If the certificate is issued to a licensed automobile dealer, the certificate shall be valid for 180 days.

(f) A test may be made at any time within 90 days prior to the date otherwise required.

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 obviate, at the earliest possible time, the necessity of retesting vehicles previously tested but that remain unsold in the licensed automobile vehicle dealer's inventory, it is necessary that this act take effect immediately.

CHAPTER 93

An act to amend Section 8607.1 of the Government Code, relating to fire suppression.

[Approved by Governor July 3, 1998. Filed with Secretary of State July 3, 1998.]

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

SECTION 1. Section 8607.1 of the Government Code is amended to read:

8607.1. (a) It is the intent of the Legislature that a statewide system for fire hydrants be adopted so that all firefighters can respond to emergencies calling for the use of water at any location in the state. Without this statewide standardized system, the lives of firefighters and those they serve would be put in serious jeopardy in a mutual aid fire response effort stretching across city and county boundaries.

(b) By January 1, 1994, the State Fire Marshal shall establish a statewide uniform color coding of fire hydrants. In determining the color coding of fire hydrants, the State Fire Marshal shall consider the national system of coding developed by the National Fire Protection Association as Standard 291 in Chapter 2 on Fire Flow Testing and Marking of Hydrants. The uniform color coding shall not preempt local agencies from adding additional markings.

(c) Compliance with the uniform color coding requirements of subdivision (b) shall be undertaken by each agency that currently maintains fire hydrants throughout the state as part of its ongoing maintenance program for its fire hydrants. Alternatively, an agency may comply with the uniform color coding requirements by installing one or more reflector buttons in a mid-street location directly adjacent to the fire hydrant in the appropriate color that would otherwise be required for the hydrant and a curb marking as near to the hydrant as practicable in that same color.

(d) By July 1, 1994, the State Fire Marshal shall develop and adopt regulations establishing statewide uniform fire hydrant coupling sizes. The regulations adopted pursuant to this section shall include provisions that permit the use of an adapter mounted on the hydrant as a means of achieving uniformity. In determining uniform fire hydrant coupling sizes, the State Fire Marshal shall consider any system developed by the National Fire Protection Association, the National Fire Academy, or the Federal Emergency Management Agency.

(e) By December 1, 1996, each local agency, city, county, city and county, or special district in order to be eligible for any funding of mutual aid fire response related costs under disaster assistance programs, shall comply with regulations adopted pursuant to this section. Compliance may be met if at least one coupling on the hydrant is of the uniform size.

(f) Subdivision (d) shall not be applicable to the City and County of San Francisco due to the existing water system.

CHAPTER 94

An act making an appropriation for the payment of claims against the State of California, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 3, 1998. Filed with Secretary of State July 3, 1998.]

I am signing Assembly Bill No. 2776 with a reduction.

This bill would appropriate monies from the General Fund to the State Board of Control for payment of a claim submitted by the Public Employees' Retirement System for back interest earnings on deferred employer retirement contributions claimed in the case Board of Administration et al. v. Wilson, etc.

However, this bill includes an appropriation in excess of what is needed to pay this claim. Therefore, I am reducing the appropriation contained in this bill by $5,493,805 to reflect the actual amount owed for this claim as of July 7, 1998. The revised appropriation shall be $333,040,706.

PETE WILSON, Governor

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

SECTION 1. The sum of up to three hundred thirty-eight million five hundred thirty-four thousand five hundred eleven dollars ($338,534,511) is hereby appropriated from the General Fund, in the 1998–99 fiscal year, to the Secretary of the State Board of Control to pay the Board of Administration of the Public Employees' Retirement System for a claim for back interest earnings claimed in Board of Administration et al. v. Pete Wilson, etc., Sacramento

Superior Court, Case No. 377815, in the amount as determined pursuant to that case.

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 settle claims against the state and end hardship to claimants as quickly as possible, it is necessary that this act take effect immediately.

CHAPTER 95

An act to add Article 16 (commencing with Section 11475) to Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code, and to amend Section 123.6 of the Labor Code, relating to administrative law.

[Approved by Governor July 3, 1998. Filed with Secretary of State July 6, 1998.]

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

SECTION 1. Article 16 (commencing with Section 11475) is added to Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code, to read:

Article 16. Administrative Adjudication Code of Ethics

11475. The rules imposed by this article may be referred to as the Administrative Adjudication Code of Ethics.

11475.10. (a) This article applies to the following persons:

(1) An administrative law judge. As used in this subdivision, "administrative law judge" means an incumbent of that position, as defined by the State Personnel Board, for each class specification for Administrative Law Judge.

(2) A presiding officer to which this article is made applicable by statute or regulation.

(b) This article shall apply notwithstanding any general statutory provision that this chapter does not apply to some or all of a state agency's adjudicative proceedings.

11475.20. Except as otherwise provided in this article, the Code of Judicial Ethics adopted by the Supreme Court pursuant to subdivision (m) of Section 18 of Article VI of the California Constitution for the conduct of judges governs the hearing and nonhearing conduct of an administrative law judge or other presiding officer to which this article applies.

11475.30. For the purpose of this article, the following terms used in the Code of Judicial Ethics have the meanings provided in this section:

(a) "Appeal" means administrative review.

(b) "Court" means the agency conducting an adjudicative proceeding.

(c) "Judge" means administrative law judge or other presiding officer to which this article applies. Related terms, including "judicial," "judiciary," and "justice," mean comparable concepts in administrative adjudication.

(d) "Law" includes regulation and precedent decision.

11475.40. The following provisions of the Code of Judicial Ethics do not apply under this article:

(a) Canon 3B(7), to the extent it relates to ex parte communications.

(b) Canon 3B(10).

(c) Canon 3D(3).

(d) Canon 4C.

(e) Canons 4E(1), 4F, and 4G.

(f) Canons 5A–5D. However, the introductory paragraph of Canon 5 applies to persons subject to this article notwithstanding Chapter 9.5 (commencing with Section 3201) of Division 4 of Title 1, relating to political activities of public employees.

(g) Canon 6.

11475.50. A violation of an applicable provision of the Code of Judicial Ethics, or a violation of the restrictions and prohibitions on accepting honoraria, gifts, or travel that otherwise apply to elected state officers pursuant to Chapter 9.5 (commencing with Section 89500) of Title 9, by an administrative law judge or other presiding officer to which this article applies is cause for discipline by the employing agency pursuant to Section 19572.

11475.60. (a) Except as provided in subdivision (b), a person to whom this article applies shall comply immediately with all applicable provisions of the Code of Judicial Ethics.

(b) A person to whom this article applies shall comply with Canon 4D(2) of the Code of Judicial Ethics as soon as reasonably possible and shall do so in any event within a period of one year after the article becomes applicable.

11475.70. Nothing in this article shall be construed or is intended to limit or affect the rights of an administrative law judge or other presiding officer under Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1.

SEC. 2. Section 123.6 of the Labor Code is amended to read:

123.6. (a) All workers' compensation referees employed by the administrative director shall subscribe to the Code of Judicial Ethics adopted by the Supreme Court pursuant to subdivision (m) of Section 18 of Article VI of the California Constitution for the conduct

of judges and shall not otherwise, directly or indirectly, engage in conduct contrary to that code.

The administrative director shall adopt regulations to enforce this section. To the extent possible, the rules shall be consistent with the procedures established by the Commission on Judicial Performance for regulating the activities of state judges, and, to the extent possible, with the gift, honoraria, and travel restrictions on legislators contained in the Political Reform Act of 1974 (Title 9 (commencing with Section 81000) of the Government Code).

(b) Honoraria or travel allowed by the administrative director or otherwise not prohibited by this section in connection with any public or private conference, convention, meeting, social event, or like gathering, the cost of which is significantly paid for by attorneys who practice before the board, may not be accepted unless the administrative director has provided prior approval in writing to the workers' compensation referee allowing him or her to accept those payments.

CHAPTER 96

An act to amend Section 3003 of the Penal Code, relating to parole.

[Approved by Governor July 3, 1998. Filed with Secretary of State July 6, 1998.]

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

SECTION 1. Section 3003 of the Penal Code is amended to read:

3003. (a) Except as otherwise provided in this section, an inmate who is released on parole shall be returned to the county that was the last legal residence of the inmate prior to his or her incarceration.

For purposes of this subdivision, "last legal residence" shall not be construed to mean the county wherein the inmate committed an offense while confined in a state prison or local jail facility or while confined for treatment in a state hospital.

(b) Notwithstanding subdivision (a), an inmate may be returned to another county if that would be in the best interests of the public. If the Board of Prison Terms setting the conditions of parole for inmates sentenced pursuant to subdivision (b) of Section 1168, or the Department of Corrections setting the conditions of parole for inmates sentenced pursuant to Section 1170, decides on a return to another county, it shall place its reasons in writing in the parolee's permanent record and include these reasons in the notice to the sheriff or chief of police pursuant to Section 3058.6. In making its decision, the paroling authority shall consider, among others, the following factors, giving the greatest weight to the protection of the victim and the safety of the community:

(1) The need to protect the life or safety of a victim, the parolee, a witness, or any other person.

(2) Public concern that would reduce the chance that the inmate's parole would be successfully completed.

(3) The verified existence of a work offer, or an educational or vocational training program.

(4) The existence of family in another county with whom the inmate has maintained strong ties and whose support would increase the chance that the inmate's parole would be successfully completed.

(5) The lack of necessary outpatient treatment programs for parolees receiving treatment pursuant to Section 2960.

(c) The Department of Corrections, in determining an out-of-county commitment, shall give priority to the safety of the community and any witnesses and victims.

(d) In making its decision about an inmate who participated in a joint venture program pursuant to Article 1.5 (commencing with Section 2717.1) of Chapter 5, the paroling authority shall give serious consideration to releasing him or her to the county where the joint venture program employer is located if that employer states to the paroling authority that he or she intends to employ the inmate upon release.

(e) (1) The following information, if available, shall be released by the Department of Corrections to local law enforcement agencies regarding a paroled inmate who is released in their jurisdictions:

(A) Last, first, and middle name.

(B) Birth date.

(C) Sex, race, height, weight, and hair and eye color.

(D) Date of parole and discharge.

(E) Registration status, if the inmate is required to register as a result of a controlled substance, sex, or arson offense.

(F) California Criminal Information Number, FBI number, social security number, and driver's license number.

(G) County of commitment.

(H) A description of scars, marks, and tattoos on the inmate.

(I) Offense or offenses for which the inmate was convicted that resulted in parole in this instance.

(J) Address, including all of the following information:

(i) Street name and number. Post office box numbers are not acceptable for purposes of this subparagraph.

(ii) City and ZIP Code.

(iii) Date the address as provided pursuant to this subparagraph was proposed to be effective.

(K) Contact officer and unit, including all of the following information:

(i) Name and telephone number of each contact officer.

(ii) Contact unit type of each contact officer such as units responsible for parole, registration, or county probation.

(L) A digitized image of the photograph and at least a single digit fingerprint of the parolee.

(M) A geographic coordinate for the parolee's residence location for use with a Geographical Information System (GIS) or comparable computer program.

(2) The information required by this subdivision shall come from the statewide parolee data base. The information obtained from each source shall be based on the same timeframe.

(3) All of the information required by this subdivision shall be provided utilizing a computer-to-computer transfer in a format usable by a desktop computer system. The transfer of this information shall be continually available to local law enforcement agencies upon request.

(4) The unauthorized release or receipt of the information described in this subdivision is a violation of Section 11143.

(f) Notwithstanding any other law, an inmate who is released on parole shall not be returned to a location within 35 miles of the actual residence of a victim of, or a witness to, a violent felony as defined in paragraphs (1) to (7), inclusive, of subdivision (c) of Section 667.5 or a felony in which the defendant inflicts great bodily injury on any person other than an accomplice that has been charged and proved as provided for in Section 12022.7 or 12022.9, if the victim or witness has requested additional distance in the placement of the inmate on parole, and if the Board of Prison Terms or the Department of Corrections finds that there is a need to protect the life, safety, or well-being of a victim or witness.

(g) Notwithstanding any other law, an inmate who is released on parole for any violation of Section 288 or 288.5 shall not be placed within one-quarter mile of any school including any or all of grades kindergarten to 6, inclusive.

(h) The authority shall give consideration to the equitable distribution of parolees and the proportion of out-of-county commitments from a county compared to the number of commitments from that county when making parole decisions.

(i) An inmate may be paroled to another state pursuant to any other law.

(j) (1) Except as provided in paragraph (2), the Department of Corrections shall be the agency primarily responsible for, and shall have control over, the program, resources, and staff implementing the Law Enforcement Automated Data System (LEADS) in conformance with subdivision (e).

(2) Notwithstanding paragraph (1), the Department of Justice shall be the agency primarily responsible for the proper release of information under LEADS that relates to fingerprint cards.

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CHAPTER 97

An act to amend Sections 1346 and 1347.5 of the Penal Code, relating to criminal procedure.

[Approved by Governor July 3, 1998. Filed with Secretary of State July 6, 1998.]

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

SECTION 1. Section 1346 of the Penal Code is amended to read:

1346. (a) When a defendant has been charged with a violation of Section 220, 243.4, 261, 261.5, 264.1, 273a, 273d, 285, 286, 288, 288a, 288.5, 289, or 647.6, where the victim either is a person 15 years of age or less or is developmentally disabled as a result of mental retardation, as specified in subdivision (a) of Section 4512 of the Welfare and Institutions Code, the people may apply for an order that the victim's testimony at the preliminary hearing, in addition to being stenographically recorded, be recorded and preserved on videotape.

(b) The application for the order shall be in writing and made three days prior to the preliminary hearing.

(c) Upon timely receipt of the application, the magistrate shall order that the testimony of the victim given at the preliminary hearing be taken and preserved on videotape. The videotape shall be transmitted to the clerk of the court in which the action is pending.

(d) If at the time of trial the court finds that further testimony would cause the victim emotional trauma so that the victim is medically unavailable or otherwise unavailable within the meaning of Section 240 of the Evidence Code, the court may admit the videotape of the victim's testimony at the preliminary hearing as former testimony under Section 1291 of the Evidence Code.

(e) Any videotape which is taken pursuant to this section is subject to a protective order of the court for the purpose of protecting the privacy of the victim. This subdivision does not affect the provisions of subdivision (b) of Section 868.7.

(f) Any videotape made pursuant to this section shall be made available to the prosecuting attorney, the defendant, and his or her attorney for viewing during ordinary business hours. Any videotape which is made available pursuant to this section is subject to a protective order of the court for the purpose of protecting the privacy of the victim.

(g) The tape shall be destroyed after five years have elapsed from the date of entry of judgment; provided, however, that if an appeal is filed, the tape shall not be destroyed until a final judgment on appeal has been rendered.

SEC. 2. Section 1347.5 of the Penal Code is amended to read:

1347.5. (a) It is the intent of the Legislature, in enacting this section, to provide the court with discretion to modify court procedures, as a reasonable accommodation, to assure that adults and children with disabilities who have been victims of an alleged sexual or otherwise specified offense are able to participate effectively in criminal proceedings. In exercising its discretion, the court shall balance the rights of the defendant against the right of the victim who has a disability to full access and participation in the proceedings, while preserving the integrity of the court's truthfinding function.

(1) For purposes of this section, the term "disability" is defined in paragraphs (1) and (2) of subdivision (c) of Section 11135 of the Government Code.

(2) The right of the victim is not to confront the perpetrator, but derives under both Section 504 of the Rehabilitation Act of 1973 (29 U.S.C.A. Sec. 794) and the Americans with Disabilities Act of 1990 (42 U.S.C.A. Sec. 12101 and following) as a right to participate in or benefit from the same services or services that are equal or as effective as those enjoyed by persons without disabilities.

(b) Notwithstanding any other law, in any criminal proceeding in which the defendant is charged with a violation of Section 220, 243.4, 261, 261.5, 264.1, 273a, 273d, 285, 286, 288, 288a, 288.5, or 289, subdivision (1) of Section 314, Section 647.6, or with any attempt to commit a crime listed in this subdivision, committed with or upon a person with a disability, the court in its discretion may make accommodations to support the person with a disability, including, but not limited to, any of the following:

(1) Allow the person with a disability reasonable periods of relief from examination and cross-examination during which he or she may retire from the courtroom. The judge may also allow other witnesses in the proceeding to be examined when the person with a disability retires from the courtroom.

(2) Allow the person with a disability to utilize a support person pursuant to Section 868.5 or a regional center representative providing services to a developmentally disabled individual pursuant to Article 1 (commencing with Section 4620) or Article 2 (commencing with Section 4640) of Chapter 5 of Division 4.5 of the Welfare and Institutions Code. In addition to, or instead of, allowing the person with a disability to utilize a support person or regional center representative pursuant to this paragraph, the court may allow the person with a disability to utilize a person necessary to facilitate the communication or physical needs of developmentally disabled individuals.

(3) Notwithstanding Section 68119 of the Government Code, the judge may remove his or her robe if the judge believes that this formal attire prevents full participation of the person with a disability because it is intimidating to him or her.

(4) The judge, parties, witnesses, support persons, and court personnel may be relocated within the courtroom to facilitate a more

comfortable and personal environment for the person with a disability as well as accommodating any specific requirements for communication by that person.

(c) The prosecutor may apply for an order that the testimony of the person with a disability at the preliminary hearing, in addition to being stenographically recorded, be recorded and preserved on videotape.

(1) The application for the order shall be in writing and made three days prior to the preliminary hearing.

(2) Upon timely receipt of the application, the judge shall order that the testimony of the person with a disability given at the preliminary hearing be taken and preserved on videotape. The videotape shall be transmitted to the clerk of the court in which the action is pending.

(3) If at the time of trial the court finds that further testimony would cause the person with a disability emotional trauma so that he or she is medically unavailable or otherwise unavailable within the meaning of Section 240 of the Evidence Code, the court may admit the videotape of his or her testimony at the preliminary hearing as former testimony under Section 1291 of the Evidence Code.

(4) Any videotape that is taken pursuant to this subdivision is subject to a protective order of the court for the purpose of protecting the privacy of the person with a disability. This subdivision does not affect the provisions of subdivision (b) of Section 868.7.

(d) Notwithstanding any other law, the court in any criminal proceeding, upon written notice of the prosecutor made at least three days prior to the date of the preliminary hearing or trial date on which the testimony of the person with a disability is scheduled, or during the course of the proceeding on the court's own motion, may order that the testimony of the person with a disability be taken by contemporaneous examination and cross-examination in another place and out of the presence of the judge, jury, and defendant, and communicated to the courtroom by means of two-way closed-circuit television, if the court makes all of the following findings:

(1) The person with a disability will be called on to testify concerning facts of an alleged sexual offense, or other crime as specified in subdivision (b), committed on or with that person.

(2) The impact on the person with a disability of one or more of the factors enumerated in subparagraphs (A) to (D), inclusive, is shown by clear and convincing evidence to be so substantial as to make the person with a disability unavailable as a witness unless closed-circuit television is used. The refusal of the person with a disability to testify shall not alone constitute sufficient evidence that the special procedure described in this subdivision is necessary in order to accommodate the disability. The court may take into consideration the relationship between the person with a disability and the defendant or defendants.

(A) Threats of serious bodily injury to be inflicted on the person with a disability or a family member, of incarceration, institutionalization, or deportation of the person with a disability or a family member, or of removal of the person with a disability from his or her residence by withholding needed services when the threats come from a service provider, in order to prevent or dissuade the person with a disability from attending or giving testimony at any trial or court proceeding or to prevent that person from reporting the alleged offense or from assisting in criminal prosecution.

(B) Use of a firearm or any other deadly weapon during the commission of the crime.

(C) Infliction of great bodily injury upon the person with a disability during the commission of the crime.

(D) Conduct on the part of the defendant or defense counsel during the hearing or trial that causes the person with a disability to be unable to continue his or her testimony.

(e) (1) The hearing on the motion brought pursuant to this subdivision shall be conducted out of the presence of the jury.

(2) Notwithstanding Section 804 of the Evidence Code or any other law, the court, in determining the merits of the motion, shall not compel the person with a disability to testify at the hearing; nor shall the court deny the motion on the ground that the person with a disability has not testified.

(3) In determining whether the impact on an individual person with a disability of one or more of the factors enumerated under paragraph (2) of subdivision (d) is so substantial that the person is unavailable as a witness unless the closed-circuit television procedure is employed, the court may question the person with a disability in chambers, or at some other comfortable place other than the courtroom, on the record for a reasonable period of time with the support person described under paragraph (2) of subdivision (b), the prosecutor, and defense counsel present. At this time the court shall explain the process to the person with a disability. The defendant or defendants shall not be present; however, the defendant or defendants shall have the opportunity to contemporaneously observe the proceedings by closed-circuit television. Defense counsel shall be afforded a reasonable opportunity to consult with the defendant or defendants prior to the conclusion of the session in chambers.

(f) When the court orders the testimony of a victim who is a person with a disability to be taken in another place outside of the courtroom, the court shall do all of the following:

(1) Make a brief statement on the record, outside of the presence of the jury, of the reasons in support of its order. While the statement need not include traditional findings of fact, the reasons shall be set forth with sufficient specificity to permit meaningful review and to demonstrate that discretion was exercised in a careful, reasonable, and equitable manner.

(2) Instruct the members of the jury that they are to draw no inferences from the use of closed-circuit television as a means of assuring the full participation of the victim who is a person with a disability by accommodating that individual's disability.

(3) Instruct respective counsel, outside of the presence of the jury, that they are to make no comment during the course of the trial on the use of closed-circuit television procedures.

(4) Instruct the support person, if the person is part of the court's accommodation of the disability, outside of the presence of the jury, that he or she is not to coach, cue, or in any way influence or attempt to influence the testimony of the person with a disability.

(5) Order that a complete record of the examination of the person with a disability, including the images and voices of all persons who in any way participate in the examination, be made and preserved on videotape in addition to being stenographically recorded. The videotape shall be transmitted to the clerk of the court in which the action is pending and shall be made available for viewing to the prosecuting attorney, the defendant, and his or her attorney, during ordinary business hours. The videotape shall be destroyed after five years have elapsed from the date of entry of judgment. If an appeal is filed, the tape shall not be destroyed until a final judgment on appeal has been ordered. Any videotape that is taken pursuant to this section is subject to a protective order of the court for the purpose of protecting the privacy of the person with a disability. This subdivision does not affect the provisions of subdivision (b) of Section 868.7.

(g) When the court orders the testimony of a victim who is a person with a disability to be taken in another place outside the courtroom, nothing in this section shall prohibit the court from ordering the victim to appear in the courtroom for a limited purpose, including the identification of the defendant or defendants as the court deems necessary.

(h) The examination shall be under oath, and the defendant shall be able to see and hear the person with a disability. If two-way closed-circuit television is used, the defendant's image shall be transmitted live to the person with a disability.

(i) Nothing in this section shall affect the disqualification of witnesses pursuant to Section 701 of the Evidence Code.

(j) The cost of examination by contemporaneous closed-circuit television ordered pursuant to this section shall be borne by the court out of its existing budget.

(k) This section shall not be construed to obviate the need to provide other accommodations necessary to ensure accessibility of courtrooms to persons with disabilities nor prescribe a lesser standard of accessibility or usability for persons with disabilities than that provided by Title II of the Americans with Disabilities Act of 1990 (42 U.S.C.A. Sec. 12101 and following) and federal regulations adopted pursuant to that act.

(*l*) The Judicial Council shall report to the Legislature, no later than two years after the enactment of this subdivision, on the frequency of the use and effectiveness of admitting the videotape of testimony by means of closed-circuit television.

CHAPTER 98

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

[Approved by Governor July 3, 1998. Filed with Secretary of State July 6, 1998.]

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

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

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

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

(2) When a defendant is not brought to trial in a superior court within 60 days of the defendant's arraignment in the superior court, or reinstatement of criminal proceedings pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2, or, in case the cause is to be tried again following a mistrial, an order granting a new trial from which an appeal is not taken, or an appeal from the superior court, within 60 days after the mistrial has been declared, after entry of the order granting the new trial, or after the filing of the remittitur in the trial court, or after the issuance of a writ or order which, in effect, grants a new trial, within 60 days after notice of the writ or order is filed in the trial court and served upon the prosecuting attorney, or within 90 days after notice of the writ or order is filed in the trial court and served upon the prosecuting attorney in any case where the district attorney chooses to resubmit the case for a preliminary examination after an appeal or the issuance of a writ reversing a judgment of conviction upon a plea of guilty prior to a preliminary hearing in a municipal or justice court. However, an action shall not be dismissed under this paragraph if either of the following circumstances exist:

(A) The defendant enters a general waiver of the 60-day trial requirement. A general waiver of the 60-day trial requirement entitles the superior court to set or continue a trial date without the sanction of dismissal should the case fail to proceed on the date set for trial. If the defendant, after proper notice to all parties, later withdraws his or her waiver in the superior court, the defendant shall be brought to trial within 60 days of the date of that withdrawal. If

a general time waiver is not expressly entered, subparagraph (B) shall apply.

(B) The defendant requests or consents to the setting of a trial date beyond the 60-day period. Whenever a case is set for trial beyond the 60-day period by request or consent, expressed or implied, of the defendant without a general waiver, the defendant shall be brought to trial on the date set for trial or within 10 days thereafter.

Whenever a case is set for trial after a defendant enters either a general waiver as to the 60-day trial requirement or requests or consents, expressed or implied, to the setting of a trial date beyond the 60-day period pursuant to this paragraph, the court may not grant a motion of the defendant to vacate the date set for trial and to set an earlier trial date unless all parties are properly noticed and the court finds good cause for granting that motion.

(3) Regardless of when the complaint is filed, when a defendant in a misdemeanor case in an inferior court is not brought to trial within 30 days after he or she is arraigned or enters his or her plea, whichever occurs later, if the defendant is in custody at the time of arraignment or plea, whichever occurs later, or in all other cases, within 45 days after the defendant's arraignment or entry of the plea, whichever occurs later, or in case the cause is to be tried again following a mistrial, an order granting a new trial from which no appeal is taken, or an appeal from the inferior court, within 30 days after the mistrial has been declared, after entry of the order granting the new trial, or after the remittitur is filed in the trial court or, if the new trial is to be held in the superior court, within 30 days after the judgment on appeal becomes final. However, an action shall not be dismissed under this subdivision if any of the following circumstances exist:

(A) The defendant enters a general waiver of the 30-day or 45-day trial requirement. A general waiver of the 30-day or 45-day trial requirement entitles the inferior court to set or continue a trial date without the sanction of dismissal should the case fail to proceed on the date set for trial. If the defendant, after proper notice to all parties, later withdraws his or her waiver in the inferior court, the defendant shall be brought to trial within 30 days of the date of that withdrawal. If a general time waiver is not expressly entered, subparagraph (B) shall apply.

(B) The defendant requests or consents to the setting of a trial date beyond the 30-day or 45-day period. In the absence of an express general time waiver from the defendant, the inferior court shall set a trial date. Whenever a case is set for trial beyond the 30-day or 45-day period by request or consent, expressed or implied, of the defendant without a general waiver, the defendant shall be brought to trial on the date set for trial or within 10 days thereafter.

(C) The defendant in a misdemeanor case has been ordered to appear on a case set for hearing prior to trial, but the defendant fails to appear on that date and a bench warrant is issued, or the case is

not tried on the date set for trial because of the defendant's neglect or failure to appear, in which case the defendant shall be deemed to have been arraigned within the meaning of this subdivision on the date of his or her subsequent arraignment on a bench warrant or his or her submission to the court.

(b) Whenever a defendant has been ordered to appear in superior court on a case set for trial or set for a hearing prior to trial, if the defendant fails to appear on that date and a bench warrant is issued, the defendant shall be brought to trial within 60 days after the defendant next appears in the superior court unless a trial date previously had been set which is beyond that 60-day period.

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

CHAPTER 99

An act to amend Section 12926 of the Government Code, relating to discrimination.

[Approved by Governor July 3, 1998. Filed with Secretary of State July 6, 1998.]

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

SECTION 1. Section 12926 of the Government Code is amended to read:

12926. As used in this part in connection with unlawful practices, unless a different meaning clearly appears from the context:

(a) "Affirmative relief" or "prospective relief" includes the authority to order reinstatement of an employee, awards of backpay, reimbursement of out-of-pocket expenses, hiring, transfers, reassignments, grants of tenure, promotions, cease and desist orders, posting of notices, training of personnel, testing, expunging of records, reporting of records, and any other similar relief that is intended to correct unlawful practices under this part.

(b) "Age" refers to the chronological age of any individual who has reached his or her 40th birthday.

(c) "Employee" does not include any individual employed by his or her parents, spouse, or child, or any individual employed under a special license in a nonprofit sheltered workshop or rehabilitation facility.

(d) "Employer" includes any person regularly employing five or more persons, or any person acting as an agent of an employer,

directly or indirectly, the state or any political or civil subdivision thereof, and cities, except as follows:

(1) "Employer" does not include a religious association or corporation not organized for private profit.

(2) "Employer," for purposes of provisions defining unlawful employment practices related to mental disability, means any person regularly employing 15 or more persons, or any person directly or indirectly acting as an agent of such an employer, and also includes the state and municipalities and political subdivisions of the state.

(e) "Employment agency" includes any person undertaking for compensation to procure employees or opportunities to work.

(f) "Essential functions" means the fundamental job duties of the employment position the individual with a disability holds or desires. "Essential functions" does not include the marginal functions of the position.

(1) A job function may be considered essential for any of several reasons, including, but not limited to, any one or more of the following:

(A) The function may be essential because the reason the position exists is to perform that function.

(B) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed.

(C) The function may be highly specialized, so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

(2) Evidence of whether a particular function is essential includes, but is not limited to, the following:

(A) The employer's judgment as to which functions are essential.

(B) Written job descriptions prepared before advertising or interviewing applicants for the job.

(C) The amount of time spent on the job performing the function.

(D) The consequences of not requiring the incumbent to perform the function.

(E) The terms of a collective bargaining agreement.

(F) The work experiences of past incumbents in the job.

(G) The current work experience of incumbents in similar jobs.

(g) "Labor organization" includes any organization that exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection.

(h) "Medical condition" includes (1) genetic characteristics, or (2) any health impairment related to or associated with a diagnosis of cancer, for which a person has been rehabilitated or cured, based on competent medical evidence. For purposes of this section, "genetic characteristics" means any scientifically or medically identifiable gene or chromosome, or combination or alteration

thereof, that is known to be a cause of a disease or disorder in a person or his or her offspring, or is determined to be associated with a statistically increased risk of development of a disease or disorder, or inherited characteristics that may derive from the individual or family member, that is presently not associated with any symptoms of any disease or disorder.

(i) "Mental disability" includes any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. However, "mental disability" does not include conditions excluded from the federal definition of "disability" pursuant to Section 511 of the Americans with Disabilities Act of 1990 (42 U.S.C., Sec. 12211). Additionally, for purposes of this part, the unlawful use of controlled substances or other drugs shall not be deemed, in and of itself, to constitute a mental disability.

(j) "On the bases enumerated in this part" means or refers to discrimination on the basis of one or more of the following: race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or age.

(k) "Physical disability" includes, but is not limited to, all of the following:

(1) Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does both of the following:

(A) Affects one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.

(B) Limits an individual's ability to participate in major life activities.

(2) Any other health impairment not described in paragraph (1) that requires special education or related services.

(3) Being regarded as having or having had a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in paragraph (1) or (2).

(4) Being regarded as having, or having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability as described in paragraph (1) or (2).

It is the intent of the Legislature that the definition of "physical disability" in this subdivision shall have the same meaning as the term "physical handicap" formerly defined by this subdivision and construed in American National Ins. Co. v. Fair Employment & Housing Com., 32 Cal. 3d 603. However, "physical disability" does not include conditions excluded from the federal definition of "disability" pursuant to Section 511 of the Americans with Disabilities Act of 1990 (42 U.S.C., Sec. 12211). Additionally, for purposes of this

part, the unlawful use of controlled substances or other drugs shall not be deemed, in and of itself, to constitute a physical disability.

(*l*) Notwithstanding subdivisions (i) and (k), if the definition of "disability" used in the Americans with Disabilities Act of 1990 (Public Law 101-336) would result in broader protection of the civil rights of individuals with a mental disability or physical disability, as defined in subdivision (i) or (k), or would include any medical condition not included within those definitions, then that broader protection or coverage shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of, the definitions in subdivisions (i) and (k).

(m) "Reasonable accommodation" may include either of the following:

(1) Making existing facilities used by employees readily accessible to, and usable by, individuals with disabilities.

(2) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(n) "Religious creed," "religion," "religious observance," "religious belief," and "creed" include all aspects of religious belief, observance, and practice.

(o) "Sex" includes, but is not limited to, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth.

(p) "Undue hardship" means an action requiring significant difficulty or expense, when considered in light of the following factors: (1) the nature and cost of the accommodation needed, (2) the overall financial resources of the facilities involved in the provision of the reasonable accommodations, the number of persons employed at the facility, and the effect on expenses and resources or the impact otherwise of these accommodations upon the operation of the facility, (3) the overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of employees, and the number, type, and location of its facilities, (4) the type of operations, including the composition, structure, and functions of the work force of the entity, and (5) the geographic separateness, administrative, or fiscal relationship of the facility or facilities.

CHAPTER 100

An act to amend the heading of Article 3 (commencing with Section 1550) of Chapter 2 of Division 11 of, to add Sections 1552 and 1553 to, to add Article 1 (commencing with Section 1520) to Chapter

2 of Division 11 of, and to repeal Article 1 (commencing with Section 1500) of Chapter 2 of Division 11 of, the Evidence Code, and to amend Section 1417.7 of, and to repeal and add Section 872.5 of, the Penal Code, relating to proof of the content of a writing.

[Approved by Governor July 3, 1998. Filed with Secretary of State July 6, 1998.]

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

SECTION 1. Article 1 (commencing with Section 1500) of Chapter 2 of Division 11 of the Evidence Code is repealed.

SEC. 2. Article 1 (commencing with Section 1520) is added to Chapter 2 of Division 11 of the Evidence Code, to read:

Article 1. Proof of the Content of a Writing

1520. The content of a writing may be proved by an otherwise admissible original.

1521. (a) The content of a writing may be proved by otherwise admissible secondary evidence. The court shall exclude secondary evidence of the content of writing if the court determines either of the following:

(1) A genuine dispute exists concerning material terms of the writing and justice requires the exclusion.

(2) Admission of the secondary evidence would be unfair.

(b) Nothing in this section makes admissible oral testimony to prove the content of a writing if the testimony is inadmissible under Section 1523 (oral testimony of the content of a writing).

(c) Nothing in this section excuses compliance with Section 1401 (authentication).

(d) This section shall be known as the "Secondary Evidence Rule."

1522. (a) In addition to the grounds for exclusion authorized by Section 1521, in a criminal action the court shall exclude secondary evidence of the content of a writing if the court determines that the original is in the proponent's possession, custody, or control, and the proponent has not made the original reasonably available for inspection at or before trial. This section does not apply to any of the following:

(1) A duplicate as defined in Section 260.

(2) A writing that is not closely related to the controlling issues in the action.

(3) A copy of a writing in the custody of a public entity.

(4) A copy of a writing that is recorded in the public records, if the record or a certified copy of it is made evidence of the writing by statute.

(b) In a criminal action, a request to exclude secondary evidence of the content of a writing, under this section or any other law, shall not be made in the presence of the jury.

1523. (a) Except as otherwise provided by statute, oral testimony is not admissible to prove the content of a writing.

(b) Oral testimony of the content of a writing is not made inadmissible by subdivision (a) if the proponent does not have possession or control of a copy of the writing and the original is lost or has been destroyed without fraudulent intent on the part of the proponent of the evidence.

(c) Oral testimony of the content of a writing is not made inadmissible by subdivision (a) if the proponent does not have possession or control of the original or a copy of the writing and either of the following conditions is satisfied:

(1) Neither the writing nor a copy of the writing was reasonably procurable by the proponent by use of the court's process or by other available means.

(2) The writing is not closely related to the controlling issues and it would be inexpedient to require its production.

(d) Oral testimony of the content of a writing is not made inadmissible by subdivision (a) if the writing consists of numerous accounts or other writings that cannot be examined in court without great loss of time, and the evidence sought from them is only the general result of the whole.

SEC. 3. The heading of Article 3 (commencing with Section 1550) of Chapter 2 of Division 11 of the Evidence Code is amended to read:

Article 3. Photographic Copies and Printed Representations of Writings

SEC. 4. Section 1552 is added to the Evidence Code, to read:

1552. (a) A printed representation of computer information or a computer program is presumed to be an accurate representation of the computer information or computer program that it purports to represent. This presumption is a presumption affecting the burden of producing evidence. If a party to an action introduces evidence that a printed representation of computer information or computer program is inaccurate or unreliable, the party introducing the printed representation into evidence has the burden of proving, by a preponderance of evidence, that the printed representation is an accurate representation of the existence and content of the computer information or computer program that it purports to represent.

(b) Subdivision (a) shall not apply to computer-generated official records certified in accordance with Section 452.5 or 1530.

SEC. 5. Section 1553 is added to the Evidence Code, to read:

1553. A printed representation of images stored on a video or digital medium is presumed to be an accurate representation of the

images it purports to represent. This presumption is a presumption affecting the burden of producing evidence. If a party to an action introduces evidence that a printed representation of images stored on a video or digital medium is inaccurate or unreliable, the party introducing the printed representation into evidence has the burden of proving, by a preponderance of evidence, that the printed representation is an accurate representation of the existence and content of the images that it purports to represent.

SEC. 6. Section 872.5 of the Penal Code is repealed.

SEC. 7. Section 872.5 is added to the Penal Code, to read:

872.5. Notwithstanding Article 1 (commencing with Section 1520) of Chapter 2 of Division 11 of the Evidence Code, in a preliminary examination the content of a writing may be proved by an otherwise admissible original or otherwise admissible secondary evidence.

SEC. 8. Section 1417.7 of the Penal Code is amended to read:

1417.7. Not less than 15 days before any proposed disposition of an exhibit pursuant to Section 1417.3, 1417.5, or 1417.6, the court shall notify the district attorney (or other prosecuting attorney), the attorney of record for each party, and each party who is not represented by counsel of the proposed disposition. Before the disposition, any party, at his or her own expense, may cause to be prepared a photographic record of all or part of the exhibit by a person who is not a party or attorney of a party. The clerk of the court shall observe the taking of the photographic record and, upon receipt of a declaration of the person making the photographic record that the copy and negative of the photograph delivered to the clerk is a true, unaltered, and unretouched print of the photographic record taken in the presence of the clerk, the clerk shall certify the photographic record as such without charge and retain it unaltered for a period of 60 days following the final determination of the criminal action or proceeding. A certified photographic record of exhibits shall not be deemed inadmissible pursuant to Section 1521 or 1522 of the Evidence Code.

SEC. 9. (a) This act shall become operative on January 1, 1999.

(b) This act applies in an action or proceeding commenced before, on, or after January 1, 1999.

(c) Nothing in this act invalidates an evidentiary determination made before January 1, 1999, that evidence is inadmissible pursuant to former Article 1 (commencing with Section 1500) of Chapter 2 of Division 11 of the Evidence Code. However, if an action or proceeding is pending on January 1, 1999, the proponent of evidence excluded pursuant to former Article 1 (commencing with Section 1500) of Chapter 2 of Division 11 of the Evidence Code may, on or after January 1, 1999, and before entry of judgment in the action or

proceeding, make a new request for admission of the evidence on the basis of this act.

CHAPTER 101

An act to add and repeal Section 11380.5 of the Health and Safety Code, relating to controlled substances, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 3, 1998. Filed with Secretary of State July 6, 1998.]

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

SECTION 1. Section 11380.5 is added to the Health and Safety Code, to read:

11380.5. (a) (1) Notwithstanding any other provision of law, any person who is convicted of the possession for sale or the sale of heroin, cocaine, cocaine base, methamphetamine, or phencyclidine (PCP), in addition to the punishment imposed for that conviction, shall be imprisoned in the state prison for an additional one year if the violation occurred upon the grounds of a public park or oceanfront beach.

(2) For the purposes of this section, a "public park or oceanfront beach" includes adjacent public parking lots and sidewalks.

(b) The additional punishment provided in this section shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

(c) The additional punishment provided in this section shall not be imposed in the event that any other additional punishment is imposed pursuant to Section 11353.1, 11353.5, 11353.6, 11353.7, or 11380.1.

(d) Notwithstanding any other provision of law, the court may strike the additional punishment provided for in this section if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(e) This section shall apply to a public park or oceanfront beach only if the following conditions are satisfied:

(1) The city council or county board of supervisors having jurisdiction over the public park or oceanfront beach adopts an ordinance designating the public park or oceanfront beach as a "drug-free zone" pursuant to this section.

(2) Notice of this law is posted at the public park or oceanfront beach.

(f) This section shall remain in effect only until January 1, 2003, and as of that date is repealed.

SEC. 2. Any city council or county board of supervisors that adopts an ordinance designating a public park or oceanfront beach as a "drug-free zone" shall report annually to the Legislature on the number of arrests, and the disposition of each arrest, made in each "drug-free zone."

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, 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:

The provisions of this bill were repealed by operation of law on January 1, 1998. However, prior to that date, those provisions were being effectively used by law enforcement officials to reduce the use and trafficking of specified controlled substances in public parks and oceanfront beaches. In order to minimize the period of time that law enforcement officials are precluded from using this law, it is necessary for this act to take effect immediately.

CHAPTER 102

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

[Approved by Governor July 3, 1998. Filed with Secretary of State July 6, 1998.]

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

SECTION 1. This act may be cited as the First Validating Act of 1998.

SEC. 2. As used in this act:

(a) "Public body" means the state and all departments, agencies, boards, commissions, and authorities of the state. "Public body" also means all counties, cities and counties, cities, districts, authorities, agencies, boards, commissions, and other entities, whether created by a general statute or a special act, including, but not limited to, the following:

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

Air pollution control districts of any kind.

Air quality management districts.

Airport districts.

Assessment districts, benefit assessment districts, and special assessment districts of any public body.

Bridge and highway districts.

California water districts.

Citrus pest control districts.

City maintenance districts.

Community college districts.

Community development commissions.

Community facilities districts.

Community redevelopment agencies.

Community rehabilitation districts.

Community services districts.

Conservancy districts.

Cotton pest abatement districts.

County boards of education.

County drainage districts.

County flood control and water districts.

County free library systems.

County maintenance districts.

County sanitation districts.

County service areas.

County transportation commissions.

County water agencies.

County water authorities.

County water districts.

County waterworks districts.

Department of Water Resources and other agencies acting pursuant to Part 3 (commencing with Section 11100) of Division 6 of the Water Code.

Distribution districts of any public body.

Drainage districts.

Fire protection districts.

Flood control and water conservation districts.

Flood control districts.

Garbage and refuse disposal districts.

Garbage disposal districts.

Geologic hazard abatement districts.
Harbor districts.
Harbor improvement districts.
Harbor, recreation, and conservation districts.
Health care authorities.
Highway districts.
Highway interchange districts.
Highway lighting districts.
Housing authorities.
Improvement districts or improvement areas of any public body.
Industrial development authorities.
Infrastructure financing districts.
Integrated financing districts.
Irrigation districts.
Joint highway districts.
Levee districts.
Library districts.
Library districts in unincorporated towns and villages.
Local agency formation commissions.
Local health care districts.
Local health districts.
Local hospital districts.
Local transportation authorities or commissions.
Maintenance districts.
Memorial districts.
Metropolitan transportation commissions.
Metropolitan water districts.
Mosquito abatement or vector control districts.
Municipal improvement districts.
Municipal utility districts.
Municipal water districts.
Nonprofit corporations.
Nonprofit public benefit corporations.
Open-space maintenance districts.
Parking authorities.
Parking districts.
Permanent road divisions.
Pest abatement districts.
Police protection districts.
Port districts.
Project areas of community redevelopment agencies.
Protection districts.
Public cemetery districts.
Public utility districts.
Rapid transit districts.
Reclamation districts.
Recreation and park districts.
Regional justice facility financing agencies.

Regional park and open-space districts.
Regional planning districts.
Regional transportation commissions.
Resort improvement districts.
Resource conservation districts.
River port districts.
Road maintenance districts.
Sanitary districts.
School districts of any kind or class.
Separation of grade districts.
Service authorities for freeway emergencies.
Sewer districts.
Sewer maintenance districts.
Small craft harbor districts.
Stone and pome fruit pest control districts.
Storm drain maintenance districts.
Storm drainage districts.
Storm drainage maintenance districts.
Storm water districts.
Toll tunnel authorities.
Traffic authorities.
Transit development boards.
Transit districts.
Unified and union school districts' public libraries.
Vehicle parking districts.
Water agencies.
Water authorities.
Water conservation districts.
Water districts.
Water replenishment districts.
Water storage districts.
Wine grape pest and disease control districts.
Zones, improvement zones, or service zones of any public body.

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

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

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

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

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

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

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

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

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

to the voters of any public body the question of issuing bonds for any public purpose, those bonds, if hereafter authorized by the required vote and in accordance with the proceedings heretofore taken, and issued and delivered in accordance with that authorization, shall be the legal, valid, and binding obligations of the public body.

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

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

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

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

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

SEC. 9. Nothing contained in this act shall be construed to render the creation of any public body, or any change in the boundaries of any public body, effective for purposes of assessment or taxation unless the statement, together with the map or plat, required to be filed pursuant to Chapter 8 (commencing with Section 54900) of Part 1 of Division 2 of Title 5 of the Government Code, is filed within the time and substantially in the manner required by those sections.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within

the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

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

CHAPTER 103

An act to amend Sections 2628, 2942, and 7666 of the Probate Code, relating to estates.

[Approved by Governor July 3, 1998. Filed with Secretary of State July 6, 1998.]

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

SECTION 1. Section 2628 of the Probate Code is amended to read:

2628. (a) As used in this section, "public benefit payments" means payments received or to be received under either or both of the following:

(1) Part 3 (commencing with Section 11000) of, Part 4 (commencing with Section 16000) of, or Part 5 (commencing with Section 17000) of, Division 9 of the Welfare and Institutions Code.

(2) Subchapter II (commencing with Section 401) of, or Part A of Subchapter XVI (commencing with Section 1382) of, Chapter 7 of Title 42 of the United States Code.

(b) The court may make an order that the guardian or conservator need not present the accounts otherwise required by this chapter so long as all of the following conditions are satisfied:

(1) The estate at the beginning and end of the accounting period for which an account is otherwise required consisted of property, exclusive of the residence of the ward or conservatee, of a total net value of less than seven thousand five hundred dollars ($7,500).

(2) The income of the estate for each month of the accounting period, exclusive of public benefit payments, was less than one thousand dollars ($1,000).

(3) All income of the estate during the accounting period, if not retained, was spent for the benefit of the ward or conservatee.

(c) Notwithstanding that the court has made an order under subdivision (b), the ward or conservatee or any interested person may petition the court for an order requiring the guardian or conservator to present an account as otherwise required by this chapter or the court on its own motion may make that an order. An order under this subdivision may be made ex parte or on such notice of hearing as the court in its discretion requires.

(d) For any accounting period during which all of the conditions of subdivision (b) are not satisfied, the guardian or conservator shall present the account as otherwise required by this chapter.

SEC. 2. Section 2942 of the Probate Code is amended to read:

2942. The public guardian shall be paid from the estate of the ward or conservatee for all of the following:

(a) Reasonable expenses incurred in the execution of the guardianship or conservatorship.

(b) Compensation for services of the public guardian and the attorney of the public guardian, and for the filing and processing services of the county clerk or the clerk of the superior court, in the amount the court determines is just and reasonable.

(c) An annual bond fee in the amount of twenty-five dollars ($25) plus one-fourth of 1 percent of the amount of an estate greater than ten thousand dollars ($10,000). The amount charged shall be deposited in the county treasury. This subdivision does not apply if the ward or conservatee is eligible for Social Security Supplemental Income benefits.

SEC. 3. Section 7666 of the Probate Code is amended to read:

7666. (a) Except as provided in Section 7623 and in subdivision (b), the compensation payable to the public administrator and the attorney, if any, for the public administrator for the filing of an application pursuant to this article and for performance of any duty or service connected therewith is that set out in Part 7 (commencing with Section 10800).

(b) The public administrator is entitled to a minimum compensation of seven hundred fifty dollars ($750).

CHAPTER 104

An act to amend Section 22250 of, and to add Section 22320.5 to, the Financial Code, relating to finance lenders.

[Approved by Governor July 3, 1998. Filed with Secretary of State July 6, 1998.]

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

SECTION 1. Section 22250 of the Financial Code is amended to read:

22250. (a) The following sections do not apply to any loan of a bona fide principal amount of ten thousand dollars ($10,000) or more, or to a duly licensed finance lender in connection with any such loan or loans, if the provisions of this section are not used for the purpose of evading this division: Sections 22154, 22155, 22307, 22313, 22314, 22315, and 22752, and the sections enumerated in subdivision (b).

(b) The following sections do not apply to any loan of a bona fide principal amount of five thousand dollars ($5,000) or more, or to a duly licensed finance lender in connection with any such loan or loans, if the provisions of this section are not used for the purpose of evading this division: Sections 22201, 22202, 22300, 22305, and 22306, subdivision (a) of Section 22307, and Sections 22309, 22320.5, 22322, 22323, 22325, 22326, 22327, 22334, 22400, and 22751.

SEC. 2. Section 22320.5 is added to the Financial Code, to read:

22320.5. (a) A licensee may contract for and receive a delinquency fee not in excess of one of the following amounts:

(1) For a period in default of not less than 10 days, an amount not in excess of ten dollars ($10).

(2) For a period in default of not less than 15 days, an amount not in excess of fifteen dollars ($15).

(b) The delinquency fee may not be collected more than once for the same default and may be collected at the time of the default or at any time thereafter. If the delinquency fee is deducted from any payment received after default occurs, and the deduction results in the default of a subsequent installment, no fee may be collected for the resulting default. The delinquency fee under this section is not included in charges defined in this division or in determining applicable maximum charges that may be made under this article.

(c) For open-end loans made under Article 5 (commencing with Section 22450), a licensee shall not collect or receive the delinquency fee set forth in subdivision (a) unless there is a minimum of 20 days, inclusive, between the monthly billing date and the date upon which the minimum payment is due, exclusive of the applicable grace period provided in subdivision (a).

(d) This section shall not apply to precomputed loans as described in Section 22400.

CHAPTER 105

An act to amend Sections 10262 and 10263 of the Elections Code, relating to the canvass of city election returns.

[Approved by Governor July 3, 1998. Filed with Secretary of State July 6, 1998.]

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

SECTION 1. Section 10262 of the Elections Code is amended to read:

10262. The governing body of the city shall meet at their usual place of meeting on the second Tuesday after the election to canvass the returns and to install the newly elected officers. The body shall declare elected the persons having the highest number of votes given

for each office. Upon the completion of the canvass and before installing the new officers, the body shall pass a resolution reciting the fact of the election and such other matters as are enumerated in Section 10264.

SEC. 2. Section 10263 of the Elections Code is amended to read:

10263. The governing body may, by resolution duly adopted prior to the date of election, order the canvass to be made by the elections official prior to the second Tuesday after the election. Sections 15302 and 15303 shall govern the conduct of the canvass. Upon completion of the canvass, the elections official shall certify the results to the governing body who shall on the second Tuesday after the election comply with the other provisions of Section 10262.

CHAPTER 106

An act to amend Section 26802.5 of the Government Code, relating to local government.

[Approved by Governor July 3, 1998. Filed with Secretary of State July 6, 1998.]

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

SECTION 1. Section 26802.5 of the Government Code is amended to read:

26802.5. In a county of the 11th, 15th, 17th, 18th, 21st, 22nd, 25th, 33rd, 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.

CHAPTER 107

An act to amend Sections 1357.06, 1357.50, 1357.51, 1357.52, 1366.21, 1366.22, 1366.23, 1366.24, 1366.25, 1366.26, 1366.27, and 1373.621 of, to amend and repeal Section 1357.16 of, to repeal Section 1373.62 of, the Health and Safety Code, and to amend Sections 10116.5, 10128.51, 10128.52, 10128.53, 10128.54, 10128.55, 10128.56, 10128.57, 10128.58, 10194.8, 10198.6, 10273.4, 10273.6, 10700, 10705, and 10708 of, and to amend and repeal Section 10718.55 of, the Insurance Code, relating to health, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 3, 1998. Filed with
Secretary of State July 6, 1998.]

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

SECTION 1. Section 1357.06 of the Health and Safety Code is amended to read:

1357.06. (a) Preexisting condition provisions of a plan contract shall not exclude coverage for a period beyond six months following the individual's effective date of coverage and may only relate to conditions for which medical advice, diagnosis, care, or treatment, including prescription drugs, was recommended or received from a licensed health practitioner during the six months immediately preceding the effective date of coverage.

(b) A plan that does not utilize a preexisting condition provision may impose a waiting or affiliation period, not to exceed 60 days, before the coverage issued subject to this article shall become effective. During the waiting or affiliation period no premiums shall be charged to the enrollee or the subscriber.

(c) In determining whether a preexisting condition provision or a waiting or affiliation period applies to any person, a plan shall credit the time the person was covered under creditable coverage, provided the person becomes eligible for coverage under the succeeding plan contract within 62 days of termination of prior coverage, exclusive of any waiting or affiliation period, and applies for coverage with the succeeding plan contract within the applicable enrollment period. A plan shall also credit any time an eligible employee must wait before enrolling in the plan, including any affiliation or employer-imposed waiting or affiliation 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 creditable coverage if the person becomes eligible for health coverage offered through employment or sponsored by an employer within 180 days, exclusive of any waiting or affiliation period, and applies for coverage under the succeeding plan contract within the applicable enrollment period.

(d) In addition to the preexisting condition exclusions authorized by subdivision (a) and the waiting or affiliation period authorized by subdivision (b), health plans providing coverage to a guaranteed association may impose on employers or individuals purchasing coverage who would not be eligible for guaranteed coverage if they were not purchasing through the association a waiting or affiliation period, not to exceed 60 days, before the coverage issued subject to this article shall become effective. During the waiting or affiliation period, no premiums shall be charged to the enrollee or the subscriber.

(e) An individual's period of creditable coverage shall be certified pursuant to subdivision (e) of Section 2701 of Title XXVII of the federal Public Health Services Act(42 U.S.C. Sec. 300gg(e)).

(f) A health care service plan issuing group coverage may not impose a preexisting condition exclusion to any of the following:

(1) To a newborn individual, who, as of the last day of the 30-day period beginning with the date of birth, has applied for coverage through the employer-sponsored plan.

(2) To a child who is adopted or placed for adoption before attaining 18 years of age and who, as of the last day of the 30-day period beginning with the date of adoption or placement for adoption, is covered under creditable coverage and applies for coverage through the employer-sponsored plan. This provision shall not apply if, for 63 continuous days, the child is not covered under any creditable coverage.

(3) To a condition relating to benefits for pregnancy or maternity care.

SEC. 2. Section 1357.16 of the Health and Safety Code is amended to read:

1357.16. (a) Health care service plans may enter into contractual agreements with qualified associations, as defined in subdivision (b), under which these qualified associations may assume responsibility for performing specific administrative services, as defined in this section, for qualified association members. Health care service plans that enter into agreements with qualified associations for assumption of administrative services shall establish uniform definitions for the administrative services that may be provided by a qualified association or its third-party administrator. The health care service plan shall permit all qualified associations to assume one or more of these functions when the health care service plan determines the qualified association demonstrates the administrative capacity to assume these functions.

For the purposes of this section, administrative services provided by qualified associations or their third-party administrators shall be services pertaining to eligibility determination, enrollment, premium collection, sales, or claims administration on a per-claim basis that would otherwise be provided directly by the health care service plan or through a third-party administrator on a commission basis or an agent or solicitor work force on a commission basis.

Each health care service plan that enters into an agreement with any qualified association for the provision of administrative services shall offer all qualified associations with which it contracts the same premium discounts for performing those services the health care service plan has permitted the qualified association or its third-party administrator to assume. The health care service plan shall apply these uniform discounts to the health care service plan's risk adjusted employee risk rates after the health plan has determined the qualified association's risk adjusted employee risk rates pursuant to

Section 1357.12. The health care service plan shall report to the Department of Corporations its schedule of discount for each administrative service.

In no instance may a health care service plan provide discounts to qualified associations that are in any way intended to, or materially result in, a reduction in premium charges to the qualified association due to the health status of the membership of the qualified association. In addition to any other remedies available to the commissioner to enforce this chapter, the commissioner may declare a contract between a health care service plan and a qualified association for administrative services pursuant to this section null and void if the commissioner determines any discounts provided to the qualified association are intended to, or materially result in, a reduction in premium charges to the qualified association due to the health status of the membership of the qualified association.

(b) For the purposes of this section, a qualified association is a nonprofit corporation comprised of a group of individuals or employers who associate based solely on participation in a specified profession or industry, that conforms to all of the following requirements:

(1) It accepts for membership any individual or small employer meeting its membership criteria.

(2) It does not condition membership directly or indirectly on the health or claims history of any person.

(3) It uses membership dues solely for and in consideration of the membership and membership benefits, except that the amount of the dues shall not depend on whether the member applies for or purchases insurance offered by the association.

(4) It is organized and maintained in good faith for purposes unrelated to insurance.

(5) It existed on January 1, 1972, and has been in continuous existence since that date.

(6) It has a constitution and bylaws or other analogous governing documents that provide for election of the governing board of the association by its members.

(7) It offered, marketed, or sold health coverage to its members for 20 continuous years prior to January 1, 1993.

(8) It agrees to offer only to association members any plan contract.

(9) It agrees to include any member choosing to enroll in the plan contract offered by the association, provided that the member agrees to make required premium payments.

(10) It complies with all provisions of this article.

(11) It had at least 10,000 enrollees covered by association sponsored plans immediately prior to enactment of Chapter 1128 of the Statutes of 1992.

(12) It applies any administrative cost at an equal rate to all members purchasing coverage through the qualified association.

(c) A qualified association shall comply with Section 1357.52.

(d) The department shall monitor compliance with this section and report the impact of any noncompliance to the Assembly Insurance Committee and the Senate Insurance Committee on January 1, 2002.

(e) This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

SEC. 3. 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 or no share-of-cost Medi-Cal coverage 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 or no share-of-cost Medi-Cal coverage was the reason for declining enrollment provided that, if the individual was covered under another employer health benefit 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, legal separation, divorce, or loss of no share-of-cost Medi-Cal coverage.

(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. The health benefit plan shall enroll a dependent child within 30 days after receipt of a court order or request from the district attorney, either parent or the person having custody of the child as defined in Section 3751.5 of the Family Code, the employer, or the group administrator. In the case of children who are eligible for medicaid, the State Department of Health Services may also make the request.

(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).

(5) The individual is an employee or dependent who meets the criteria described in paragraph (1) and was under a COBRA continuation provision, and the coverage under that provision has been exhausted. For purposes of this section, the definition of "COBRA" set forth in subdivision (e) of Section 1373.621 shall apply.

(6) The individual is a dependent of an enrolled eligible employee who has lost or will lose his or her no share-of-cost Medi-Cal coverage and requests enrollment within 30 days of notification of this loss of coverage.

(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) "Creditable 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, coverage for onsite medical clinics, 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.

(5) 10 U.S.C.A. Chapter 55 (commencing with Section 1071) (Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)).

(6) A medical care program of the Indian Health Service or of a tribal organization.

(7) A state health benefits risk pool.

(8) A health plan offered under 5 U.S.C.A. Chapter 89 (commencing with Section 8901) (Federal Employees Health Benefits Program (FEHBP)).

(9) A public health plan as defined in federal regulations authorized by Section 2701(c)(1)(I) of the Public Health Service Act, as amended by Public Law 104-191, the Health Insurance Portability and Accountability Act of 1996.

(10) A health benefit plan under Section 5(e) of the Peace Corps Act (22 U.S.C.A. Sec. 2504(e)).

(11) Any other creditable coverage as defined by subdivision (c) of Section 2701 of Title XXVII of the federal Public Health Services Act (42 U.S.C. Sec. 300gg(c)).

(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.

(f) "Affiliation period" means a period that, under the terms of the health benefit plan, must expire before health care services under the plan become effective.

SEC. 4. 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 or affiliation period not to exceed 60 days, before the coverage issued subject to this article shall become effective. During the waiting or affiliation 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 or affiliation period applies to any enrollee, a plan shall credit the time the enrollee was covered under creditable coverage, provided the enrollee becomes eligible for coverage under the succeeding plan contract within 62 days of termination of prior coverage, exclusive of any waiting or affiliation period, and applies for coverage under the succeeding plan within the applicable enrollment period. A plan shall also credit any time an eligible employee must wait before enrolling in the plan, including any postenrollment or employer-imposed waiting or affiliation 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 creditable coverage if the person becomes eligible for health coverage offered through employment or sponsored by an employer within 180 days, exclusive of any waiting or affiliation 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.

(g) A health care service plan issuing group coverage may not impose a preexisting condition exclusion to the following:

(1) To a newborn individual, who, as of the last day of the 30-day period beginning with the date of birth, has applied for coverage through the employer-sponsored plan.

(2) To a child who is adopted or placed for adoption before attaining 18 years of age and who, as of the last day of the 30-day period beginning with the date of adoption or placement for adoption, is covered under creditable coverage and applies for coverage through the employer-sponsored plan. This provision shall not apply if, for 63 continuous days, the child is not covered under any creditable coverage.

(3) To a condition relating to benefits for pregnancy or maternity care.

(h) An individual's period of creditable coverage shall be certified pursuant to subdivision (e) of Section 2701 of Title XXVII of the federal Public Health Services Act, 42 U.S.C. Sec. 300gg(e).

SEC. 5. Section 1357.52 of the Health and Safety Code is amended to read:

1357.52. Except in the case of a late enrollee, or for satisfaction of a preexisting condition clause in the case of initial coverage of an eligible employee, a plan may not exclude any eligible employee or dependent who would otherwise be entitled to health care services on the basis of any of the following: the health status, the medical condition including both physical and mental illnesses, the claims experience, the medical history, the genetic information, or the disability or evidence of insurability including conditions arising out of acts of domestic violence of that employee or dependent. No plan contract may limit or exclude coverage for a specific eligible employee or dependent by type of illness, treatment, medical condition, or accident, except for preexisting conditions as permitted by Sections 1357.06 and 1357.51.

SEC. 6. Section 1366.21 of the Health and Safety Code is amended to read:

1366.21. The definitions contained in this section govern the construction of this article.

(a) "Continuation coverage" means extended coverage under the group benefit plan in which an eligible employee or eligible dependent is currently enrolled, or, in the case of a termination of the group benefit plan or an employer open enrollment period, extended coverage under the group benefit plan currently offered by the employer.

(b) "Group benefit plan" means any health care service plan contract provided pursuant to Article 3.1 (commencing with Section 1357) to an employer with 2 to 19 eligible employees, as defined in Section 1357, as well as a specialized health care service plan contract provided to an employer with 2 to 19 eligible employees, as defined in Section 1357.

(c) "Qualified beneficiary" means any individual who, on the day before the qualifying event, is an enrollee in a group benefit plan offered by a health care service plan pursuant to Article 3.1 (commencing with Section 1357) and has a qualifying event, as defined in subdivision (d).

(d) "Qualifying event" means any of the following events that, but for the election of continuation coverage under this article, would result in a loss of coverage under the group benefit plan to a qualified beneficiary:

(1) The death of the covered employee.

(2) The termination of employment or reduction in hours of the covered employee's employment, except that termination for gross misconduct does not constitute a qualifying event.

(3) The divorce or legal separation of the covered employee from the covered employee's spouse.

(4) The loss of dependent status by a dependent enrolled in the group benefit plan.

(5) With respect to a covered dependent only, the covered employee's entitlement to benefits under Title XVIII of the United States Social Security Act (Medicare).

(e) "Employer" means any employer that meets the definition of "small employer" as set forth in Section 1357 and (1) employed 2 to 19 eligible employees on at least 50 percent of its working days during the preceding calendar year, or, if the employer was not in business during any part of the preceding calendar year, employed 2 to 19 eligible employees on at least 50 percent of its working days during the preceding calendar quarter, (2) has contracted for health care coverage through a group benefit plan offered by a health care service plan, and (3) is not subject to Section 4980B of the United States Internal Revenue Code or Chapter 18 of the Employee Retirement Income Security Act, 29 U.S.C. Section 1161 et seq.

(f) "Core coverage" means coverage of basic health care services, as defined in subdivision (b) of Section 1345, and other hospital, medical, or surgical benefits provided by the group benefit plan that

a qualified beneficiary was receiving immediately prior to the qualifying event, other than noncore coverage.

(g) "Noncore coverage" means coverage for vision and dental care.

SEC. 7. Section 1366.22 of the Health and Safety Code is amended to read:

1366.22. The continuation coverage requirements of this article do not apply to the following individuals:

(a) Individuals who are entitled to Medicare benefits or become entitled to Medicare benefits pursuant to Title XVIII of the United States Social Security Act, as amended or superseded. Entitlement to Medicare Part A only constitutes entitlement to benefits under Medicare.

(b) Individuals who have other hospital, medical, or surgical coverage or who are covered or become covered under another group benefit plan, including a self-insured employee welfare benefit plan, that provides coverage for individuals and that does not impose any exclusion or limitation with respect to any preexisting condition of the individual, other than a preexisting condition limitation or exclusion that does not apply to or is satisfied by the qualified beneficiary pursuant to Sections 1357 and 1357.06. A group conversion option under any group benefit plan shall not be considered as an arrangement under which an individual is or becomes covered.

(c) Individuals who are covered, become covered, or are eligible for federal COBRA coverage pursuant to Section 4980B of the United States Internal Revenue Code or Chapter 18 of the Employee Retirement Income Security Act, 29 U.S.C. Section 1161 et seq.

(d) Individuals who are covered, become covered, or are eligible for coverage pursuant to Chapter 6A of the Public Health Service Act, 42 U.S.C. Section 300bb-1 et seq.

(e) Qualified beneficiaries who fail to meet the requirements of subdivision (b) of Section 1366.24 regarding notification of a qualifying event or election of continuation coverage within the specified time limits.

(f) Qualified beneficiaries who fail to submit the correct premium amount required by subdivision (b) of Section 1366.24 and Section 1366.26, in accordance with the terms and conditions of the plan contract, or fail to satisfy other terms and conditions of the plan contract.

SEC. 8. Section 1366.23 of the Health and Safety Code is amended to read:

1366.23. (a) Every health care service plan, including a specialized health care service plan contract, that provides coverage under a group benefit plan to an employer, as defined in Section 1366.21, shall offer continuation coverage, pursuant to this section, to a qualified beneficiary under the contract upon a qualifying event without evidence of insurability. The qualified beneficiary shall,

upon election, be able to continue his or her coverage under the group benefit plan, subject to the contract's terms and conditions, and subject to the requirements of this article. Except as otherwise provided in this article, continuation coverage shall be provided under the same terms and conditions that apply to similarly situated individuals under the group benefit plan.

(b) Every health care service plan shall also offer the continuation coverage to a qualified beneficiary who (1) elects continuation coverage under a group benefit plan, as defined in this article or in Section 10128.51 of the Insurance Code, but whose continuation coverage is terminated pursuant to subdivision (b) of Section 1366.27, prior to any other termination date specified in Section 1366.27, or (2) who elects coverage through the health care service plan during any employer open enrollment, and the employer has contracted with the health care service plan to provide coverage to the employer's active employees. This continuation coverage shall be provided only for the balance of the period that the qualified beneficiary would have remained covered under the prior group benefit plan had the employer not terminated the group contract with the previous health care service plan or insurer.

(c) Every health care service plan or specialized health care service plan shall offer a qualified beneficiary the ability to elect the same core, noncore, or core and noncore coverage that the qualified beneficiary had immediately prior to the qualifying event.

(d) Any child who is born to a former employee who is a qualified beneficiary who has elected continuation coverage pursuant to this article or a child who is placed for adoption with a former employee who is a qualified beneficiary who has elected continuation coverage pursuant to this article during the period of continuation coverage provided by this article shall be considered a qualified beneficiary entitled to receive benefits pursuant to this article for the remainder of the period that the former employee is covered pursuant to this article, if the child is enrolled under a group benefit plan as a dependent of that former employee who is a qualified beneficiary within 30 days of the child's birth or placement for adoption.

(e) An individual who becomes a qualified beneficiary pursuant to this article shall continue to receive coverage pursuant to this article until continuation coverage is terminated at the qualified beneficiary's election or pursuant to Section 1366.27, whichever comes first, even if the employer that sponsored the group benefit plan that is continued subsequently becomes subject to Section 4980B of the United States Internal Revenue Code or Chapter 18 of the Employee Retirement Income Security Act, 29 U.S.C. Sec. 1161 et seq.

(f) A qualified beneficiary electing coverage pursuant to this section shall be considered part of the group contract and treated as similarly situated employees for contract purposes, unless otherwise specified in this article.

SEC. 8.5. Section 1366.24 of the Health and Safety Code is amended to read:

1366.24. (a) Every health care service plan evidence of coverage, provided for group benefit plans subject to this article, that is issued, amended, or renewed on or after January 1, 1999, shall disclose to covered employees of group benefit plans subject to this article the ability to continue coverage pursuant to this article, as required by this section.

(b) This disclosure shall state that all enrollees who are eligible to be qualified beneficiaries, as defined in subdivision (c) of Section 1366.21, shall be required, as a condition of receiving benefits pursuant to this article, to notify, in writing, the health care service plan, or the employer if the employer contracts to perform the administrative services as provided for in Section 1366.25, of all qualifying events as specified in paragraphs (1), (3), (4), and (5) of subdivision (d) of Section 1366.21 within 60 days of the date of the qualifying event. This disclosure shall inform enrollees that failure to make the notification to the health care service plan, or to the employer when under contract to provide the administrative services, within the required 60 days will disqualify the qualified beneficiary from receiving continuation coverage pursuant to this article. The disclosure shall further state that a qualified beneficiary who wishes to continue coverage under the group benefit plan pursuant to this article must request the continuation in writing and deliver the written request, by first-class mail, or other reliable means of delivery, including personal delivery, express mail, or private courier company, to the health care service plan, or to the employer if the plan has contracted with the employer for administrative services pursuant to subdivision (d) of Section 1366.25, within the 60-day period following the later of (1) the date that the enrollee's coverage under the group benefit plan terminated or will terminate by reason of a qualifying event, or (2) the date the enrollee was sent notice pursuant to subdivision (e) of Section 1366.25 of the ability to continue coverage under the group benefit plan. The disclosure required by this section shall also state that a qualified beneficiary electing continuation shall pay to the health care service plan, in accordance with the terms and conditions of the plan contract, which shall be set forth in the notice to the qualified beneficiary pursuant to subdivision (d) of Section 1366.25, the amount of the required premium payment, as set forth in Section 1366.26. The disclosure shall further require that the qualified beneficiary's first premium payment required to establish premium payment be delivered by first-class mail, certified mail, or other reliable means of delivery, including personal delivery, express mail, or private courier company, to the health care service plan, or to the employer if the employer has contracted with the plan to perform the administrative services pursuant to subdivision (d) of Section 1366.25, within 45 days of the date the qualified beneficiary provided written notice to the

health care service plan or the employer, if the employer has contracted to perform the administrative services, of the election to continue coverage in order for coverage to be continued under this article. This disclosure shall also state that the first premium payment must equal an amount sufficient to pay any required premiums and all premiums due, and that failure to submit the correct premium amount within the 45-day period will disqualify the qualified beneficiary from receiving continuation coverage pursuant to this article.

(c) The disclosure required by this section shall also describe separately how qualified beneficiaries whose continuation coverage terminates under a prior group benefit plan pursuant to subdivision (b) of Section 1366.27 may continue their coverage for the balance of the period that the qualified beneficiary would have remained covered under the prior group benefit plan, including the requirements for election and payment. The disclosure shall clearly state that continuation coverage shall terminate if the qualified beneficiary fails to comply with the requirements pertaining to enrollment in, and payment of premiums to, the new group benefit plan within 30 days of receiving notice of the termination of the prior group benefit plan.

(d) Prior to August 1, 1998, every health care service plan shall provide to all covered employees of employers subject to this article a written notice containing the disclosures required by this section, or shall provide to all covered employees of employers subject to this section a new or amended evidence of coverage that includes the disclosures required by this section. Any specialized health care service plan that, in the ordinary course of business, maintains only the addresses of employer group purchasers of benefits and does not maintain addresses of covered employees, may comply with the notice requirements of this section through the provision of the notices to its employer group purchasers of benefits.

(e) Every plan disclosure form issued, amended, or renewed on and after January 1, 1999, for a group benefit plan subject to this article shall provide a notice that, under state law, an enrollee may be entitled to continuation of group coverage and that additional information regarding eligibility for this coverage may be found in the plan's evidence of coverage.

SEC. 9. Section 1366.25 of the Health and Safety Code is amended to read:

1366.25. (a) Every group contract between a health care service plan and an employer subject to this article that is issued, amended, or renewed on or after July 1, 1998, shall require the employer to notify the plan, in writing, of any employee who has had a qualifying event, as defined in paragraph (2) of subdivision (d) of Section 1366.21, within 30 days of the qualifying event. The group contract shall also require the employer to notify the plan, in writing, within 30 days of the date, when the employer becomes subject to Section

4980B of the United States Internal Revenue Code or Chapter 18 of the Employee Retirement Income Security Act, 29 U.S.C. Sec. 1161 et seq.

(b) Every group contract between a plan and an employer subject to this article that is issued, amended, or renewed on or after July 1, 1998, shall require the employer to notify qualified beneficiaries currently receiving continuation coverage, whose continuation coverage will terminate under one group benefit plan prior to the end of the period the qualified beneficiary would have remained covered, as specified in Section 1366.27, of the qualified beneficiary's ability to continue coverage under a new group benefit plan for the balance of the period the qualified beneficiary would have remained covered under the prior group benefit plan. This notice shall be provided either 30 days prior to the termination or when all enrolled employees are notified, whichever is later.

Every health care service plan and specialized health care service plan shall provide to the employer replacing a health care service plan contract issued by the plan, or to the employer's agent or broker representative, within 15 days of any written request, information in possession of the plan reasonably required to administer the notification requirements of this subdivision and subdivision (c).

(c) Notwithstanding subdivision (a), the group contract between the health care service plan and the employer shall require the employer to notify the successor plan in writing of the qualified beneficiaries currently receiving continuation coverage so that the successor plan, or contracting employer or administrator, may provide those qualified beneficiaries with the necessary premium information, enrollment forms, and instructions consistent with the disclosure required by subdivision (c) of Section 1366.24 and subdivision (e) of this section to allow the qualified beneficiary to continue coverage. This information shall be sent to all qualified beneficiaries who are enrolled in the plan and those qualified beneficiaries who have been notified, pursuant to Section 1366.24, of their ability to continue their coverage and may still elect coverage within the specified 60-day period. This information shall be sent to the qualified beneficiary's last known address, as provided to the employer by the health care service plan or disability insurer currently providing continuation coverage to the qualified beneficiary. The successor plan shall not be obligated to provide this information to qualified beneficiaries if the employer or prior plan or insurer fails to comply with this section.

(d) A health care service plan may contract with an employer, or an administrator, to perform the administrative obligations of the plan as required by this article, including required notifications and collecting and forwarding premiums to the health care service plan. Except for the requirements of subdivisions (a), (b), and (c), this subdivision shall not be construed to permit a plan to require an employer to perform the administrative obligations of the plan as

required by this article as a condition of the issuance or renewal of coverage.

(e) Every health care service plan, or employer or administrator that contracts to perform the notice and administrative services pursuant to this section, shall, within 14 days of receiving a notice of a qualifying event, provide to the qualified beneficiary the necessary benefits information, premium information, enrollment forms, and disclosures consistent with the notice requirements contained in subdivisions (b) and (c) of Section 1366.24 to allow the qualified beneficiary to formally elect continuation coverage. This information shall be sent to the qualified beneficiary's last known address.

(f) Every health care service plan, or employer or administrator that contracts to perform the notice and administrative services pursuant to this section, shall, during the 180-day period ending on the date that continuation coverage is terminated pursuant to paragraphs (1), (3), and (5) of subdivision (a) of Section 1366.27, notify a qualified beneficiary who has elected continuation coverage pursuant to this article of the date that his or her coverage will terminate, and shall notify the qualified beneficiary of any conversion coverage available to that qualified beneficiary. This requirement shall not apply when the continuation coverage is terminated because the group contract between the plan and the employer is being terminated.

SEC. 10. Section 1366.26 of the Health and Safety Code is amended to read:

1366.26. A qualified beneficiary electing continuation coverage shall pay to the health care service plan, on or before the due date of each payment but not more frequently than on a monthly basis, not more than 110 percent of the applicable rate charged for a covered employee or, in the case of dependent coverage, not more than 110 percent of the applicable rate charged to a similarly situated individual under the group benefit plan being continued under the group contract. In the case of a qualified beneficiary who is determined to be disabled pursuant to Title II or Title XVI of the United States Social Security Act, the qualified beneficiary shall be required to pay to the health care service plan an amount no greater than 150 percent of the group rate after the first 18 months of continuation coverage provided pursuant to this section. In no case shall a health care service plan charge an employer an additional fee for administering Cal-COBRA other than those incorporated in the risk adjusted employee risk rate as provided for in subdivision (i) of Section 1357.

SEC. 11. Section 1366.27 of the Health and Safety Code is amended to read:

1366.27. (a) The continuation coverage provided pursuant to this article shall terminate at the first to occur of the following:

(1) In the case of a qualified beneficiary who is eligible for continuation coverage pursuant to paragraph (2) of subdivision (d)

of Section 1366.21, the date 18 months after the date the qualified beneficiary's benefits under the contract would otherwise have terminated because of a qualifying event.

(2) The end of the period for which premium payments were made, if the qualified beneficiary ceases to make payments or fails to make timely payments of a required premium, in accordance with the terms and conditions of the plan contract. In the case of nonpayment of premiums, reinstatement shall be governed by the terms and conditions of the plan contract.

(3) In the case of a qualified beneficiary who is eligible for continuation coverage pursuant to paragraph (1), (3), (4), or (5) of subdivision (d) of Section 1366.21, the date 36 months after the date the qualified beneficiary's benefits under the contract would otherwise have terminated by reason of a qualifying event.

(4) The requirements of this article no longer apply to the qualified beneficiary pursuant to the provisions of Section 1366.22.

(5) In the case of a qualified beneficiary who is eligible for continuation coverage pursuant to paragraph (2) of subdivision (d) of Section 1366.21, and determined, under Title II or Title XVI of the Social Security Act, to be disabled at any time during the first 60 days of continuation coverage, and the spouse or dependent who has elected coverage pursuant to this article, the date 29 months after the date the qualified beneficiary's benefits under the contract would otherwise have terminated because of a qualifying event. The qualified beneficiary shall notify the plan, or the employer or administrator that contracts to perform administrative services, of the social security determination within 60 days of the date of the determination letter and prior to the end of the original 18-month continuation coverage period in order to be eligible for coverage pursuant to this subdivision. If the qualified beneficiary is no longer disabled under Title II or Title XVI of the Social Security Act, the benefits provided in this paragraph shall terminate on the later of the date provided by paragraph (1), or the month that begins more than 31 days after the date of the final determination under Title II or Title XVI of the United States Social Security Act that the qualified beneficiary is no longer disabled. A qualified beneficiary eligible for 29 months of continuation coverage as a result of a disability shall notify the plan, or the employer or administrator that contracts to perform the notice and administrative services, within 30 days of a determination that the qualified beneficiary is no longer disabled.

(6) In the case of a qualified beneficiary who is initially eligible for and elects continuation coverage pursuant to paragraph (2) of subdivision (d) of Section 1366.21, but who has another qualifying event, as described in paragraph (1), (3), (4), or (5) of subdivision (d) of Section 1366.21, within 18 months of the date of the first qualifying event, and the qualified beneficiary has notified the plan, or the employer or administrator under contract to provide administrative services, of the second qualifying event within 60 days

of the date of the second qualifying event, the date 36 months after the date of the first qualifying event.

(7) The employer, or any successor employer or purchaser of the employer, ceases to provide any group benefit plan to his or her employees.

(8) The qualified beneficiary moves out of the plan's service area or the qualified beneficiary commits fraud or deception in the use of plan services.

(b) If the group contract between the plan and the employer is terminated prior to the date the qualified beneficiary's continuation coverage would terminate pursuant to this section, coverage under the prior plan shall terminate and the qualified beneficiary may elect continuation coverage under the subsequent group benefit plan, if any, pursuant to the requirements of subdivision (b) of Section 1366.23 and subdivision (c) of Section 1366.24.

SEC. 12. Section 1373.621 of the Health and Safety Code is amended to read:

1373.621. (a) Except for a specialized health care service plan, every health care service plan contract that is issued, amended, delivered, or renewed in this state on or after January 1, 1999, that provides hospital, medical, or surgical expense coverage under an employer-sponsored group plan for an employer subject to COBRA, as defined in subdivision (e), or an employer group for which the plan is required to offer Cal-COBRA coverage, as defined in subdivision (f), including a carrier providing replacement coverage under Section 1399.63, shall further offer the former employee the opportunity to continue benefits as required under subdivision (b), and shall further offer the former spouse of an employee or former employee the opportunity to continue benefits as required under subdivision (c).

(b) (1) In the event a former employee who worked for the employer for at least five years prior to the date of termination of employment and who is 60 years of age or older on the date employment ends is entitled to and so elects to continue benefits under COBRA or Cal-COBRA for himself or herself and for any spouse, the employee or spouse may further continue benefits beyond the date coverage under COBRA or Cal-COBRA ends, as set forth in paragraph (2). Except as otherwise specified in this section, continuation coverage shall be under the same benefit terms and conditions as if the continuation coverage under COBRA or Cal-COBRA had remained in force. For the employee or spouse, continuation coverage following the end of COBRA or Cal-COBRA is subject to payment of premiums to the health care service plan. Individuals ineligible for COBRA or Cal-COBRA, or who are eligible but have not elected or exhausted continuation coverage under federal COBRA or Cal-COBRA, are not entitled to continuation coverage under this section. Premiums for continuation coverage under this section shall be billed by, and remitted to, the health care

service plan in accordance with subdivision (d). Failure to pay the requisite premiums may result in termination of the continuation coverage in accordance with the applicable provisions in the plan's group subscriber agreement with the former employer.

(2) The former employer shall notify the former employee or spouse or both, or the former spouse of the employee or former employee, of the availability of the continuation benefits under this section in accordance with Section 2800.2 of the Labor Code. To continue health care coverage pursuant to this section, the individual shall elect to do so by notifying the plan in writing within 30 calendar days prior to the date continuation coverage under COBRA or Cal-COBRA is scheduled to end. Every health care service plan and specialized health care service plan shall provide to the employer replacing a health care service plan contract issued by the plan, or to the employer's agent or broker representative, within 15 days of any written request, information in possession of the plan reasonably required to administer the requirements of Section 2800.2 of the Labor Code.

(3) The continuation coverage shall end automatically on the earlier of (A) the date the individual reaches age 65, (B) the date the individual is covered under any group health plan not maintained by the employer or any other health plan, regardless of whether that coverage is less valuable, (C) the date the individual becomes entitled to Medicare under Title XVIII of the Social Security Act, (D) for a spouse, five years from the date on which continuation coverage under COBRA or Cal-COBRA was scheduled to end for the spouse, or (E) the date on which the former employer terminates its group subscriber agreement with the health care service plan and ceases to provide coverage for any active employees through that plan, in which case the health care service plan shall notify the former employee or spouse or both of the right to a conversion plan in accordance with Section 1373.6.

(c) (1) If a former spouse of an employee or former employee was covered as a qualified beneficiary under COBRA or Cal-COBRA, the former spouse may further continue benefits beyond the date coverage under COBRA or Cal-COBRA ends, as set forth in paragraph (2) of subdivision (b). Except as otherwise specified in this section, continuation coverage shall be under the same benefit terms and conditions as if the continuation coverage under COBRA or Cal-COBRA had remained in force. Continuation coverage following the end of COBRA or Cal-COBRA is subject to payment of premiums to the health care service plan. Premiums for continuation coverage under this section shall be billed by, and remitted to, the health care service plan in accordance with subdivision (d). Failure to pay the requisite premiums may result in termination of the continuation coverage in accordance with the applicable provisions in the plan's group subscriber agreement with the employer or former employer.

(2) The continuation coverage for the former spouse shall end automatically on the earlier of (A) the date the individual reaches 65 years of age, (B) the date the individual is covered under any group health plan not maintained by the employer or any other health plan, regardless of whether that coverage is less valuable, (C) the date the individual becomes entitled to Medicare under Title XVIII of the Social Security Act, (D) five years from the date on which continuation coverage under COBRA or Cal-COBRA was scheduled to end for the former spouse, or (E) the date on which the employer or former employer terminates its group subscriber agreement with the health care service plan and ceases to provide coverage for any active employees through that plan, in which case the health care service plan shall notify the former spouse of the right to a conversion plan in accordance with Section 1373.6.

(d) (1) If the premium charged to the employer for a specific employee or dependent eligible under this section is adjusted for the age of the specific employee, or eligible dependent, on other than a composite basis, the rate for continuation coverage under this section shall not exceed 102 percent of the premium charged by the plan to the employer for an employee of the same age as the former employee electing continuation coverage in the case of an individual who was eligible for COBRA, and 110 percent in the case of an individual who was eligible for Cal-COBRA. If the coverage continued is that of a former spouse, the premium charged shall not exceed 102 percent of the premium charged by the plan to the employer for an employee of the same age as the former spouse selecting continuation coverage in the case of an individual who was eligible for COBRA, and 110 percent in the case of an individual who was eligible for Cal-COBRA.

(2) If the premium charged to the employer for a specific employee or dependent eligible under this section is not adjusted for age of the specific employee, or eligible dependent, then the rate for continuation coverage under this section shall not exceed 213 percent of the applicable current group rate. For purposes of this section, the "applicable current group rate" means the total premiums charged by the health care service plan for coverage for the group, divided by the relevant number of covered persons.

(3) However, in computing the premiums charged to the specific employer group, the health care service plan shall not include consideration of the specific medical care expenditures for beneficiaries receiving continuation coverage pursuant to this section.

(e) For purposes of this section, "COBRA" means Section 4980B of Title 26 of the United States Code, Section 1161 et seq. of Title 29 of the United States Code, and Section 300bb of Title 42 of the United States Code, as added by the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272), and as amended.

(f) For purposes of this section, "Cal-COBRA" means the continuation coverage that must be offered pursuant to Article 4.5 (commencing with Section 1366.20), or Article 1.7 (commencing with Section 10128.50) of Chapter 1 of Part 2 of Division 2 of the Insurance Code.

(g) For the purposes of this section, "former spouse" means either an individual who is divorced from an employee or former employee or an individual who was married to an employee or former employee at the time of the death of the employee or former employee.

(h) Every plan evidence of coverage that is issued, amended, or renewed after July 1, 1999, shall contain a description of the provisions and eligibility requirements for the continuation coverage offered pursuant to this section.

(i) This section shall take effect on January 1, 1999.

SEC. 13. Section 1373.62 of the Health and Safety Code is repealed.

SEC. 14. Section 10116.5 of the Insurance Code is amended to read:

10116.5. (a) Every policy of disability insurance that is issued, amended, delivered, or renewed in this state on or after January 1, 1999, that provides hospital, medical, or surgical expense coverage under an employer-sponsored group plan for an employer subject to COBRA, as defined in subdivision (e), or an employer group for which the disability insurer is required to offer Cal-COBRA coverage, as defined in subdivision (f), including a carrier providing replacement coverage under Section 10128.3, shall further offer the former employee the opportunity to continue benefits as required under subdivision (b), and shall further offer the former spouse of an employee or former employee the opportunity to continue benefits as required under subdivision (c).

(b) (1) In the event a former employee who worked for the employer for at least five years prior to the date of termination of employment and who is 60 years of age or older on the date employment ends is entitled to and so elects to continue benefits under COBRA or Cal-COBRA for himself or herself and for any spouse, the employee or spouse may further continue benefits beyond the date coverage under COBRA or Cal-COBRA ends, as set forth in paragraph (2). Except as otherwise specified in this section, continuation coverage shall be under the same benefit terms and conditions as if the continuation coverage under COBRA or Cal-COBRA had remained in force. For the employee or spouse, continuation coverage following the end of COBRA or Cal-COBRA is subject to payment of premiums to the insurer. Individuals ineligible for COBRA or Cal-COBRA or who are eligible but have not elected or exhausted continuation coverage under federal COBRA or Cal-COBRA are not entitled to continuation coverage under this section. Premiums for continuation coverage under this section shall

be billed by, and remitted to, the insurer in accordance with subdivision (d). Failure to pay the requisite premiums may result in termination of the continuation coverage in accordance with the applicable provisions in the insurer's group contract with the former employer.

(2) The former employer shall notify the former employee or spouse or both, or the former spouse of the employee or former employee, of the availability of the continuation benefits under this section in accordance with Section 2800.2 of the Labor Code. To continue health care coverage pursuant to this section, the individual shall elect to do so by notifying the insurer in writing within 30 calendar days prior to the date continuation coverage under COBRA or Cal-COBRA is scheduled to end. Every disability insurer shall provide to the employer replacing a group benefit plan policy issued by the insurer, or to the employer's agent or broker representative, within 15 days of any written request, information in possession of the insurer reasonably required to administer the requirements of Section 2800.2 of the Labor Code.

(3) The continuation coverage shall end automatically on the earlier of (A) the date the individual reaches age 65, (B) the date the individual is covered under any group health plan not maintained by the employer or any other insurer or health care service plan, regardless of whether that coverage is less valuable, (C) the date the individual becomes entitled to Medicare under Title XVIII of the Social Security Act, (D) for a spouse, five years from the date on which continuation coverage under COBRA or Cal-COBRA was scheduled to end for the spouse, or (E) the date on which the former employer terminates its group contract with the insurer and ceases to provide coverage for any active employees through that insurer, in which case the insurer shall notify the former employee or spouse or both of the right to a conversion policy.

(c) (1) If a former spouse of an employee or former employee was covered as a qualified beneficiary under COBRA or Cal-COBRA, the former spouse may further continue benefits beyond the date coverage under COBRA or Cal-COBRA ends, as set forth in paragraph (2) of subdivision (b). Except as otherwise specified in this section, continuation coverage shall be under the same benefit terms and conditions as if the continuation coverage under COBRA or Cal-COBRA had remained in force. Continuation coverage following the end of COBRA or Cal-COBRA is subject to payment of premiums to the insurer. Premiums for continuation coverage under this section shall be billed by, and remitted to, the insurer in accordance with subdivision (d). Failure to pay the requisite premiums may result in termination of the continuation coverage in accordance with the applicable provisions in the insurer's group contract with the employer or former employer.

(2) The continuation coverage for the former spouse shall end automatically on the earlier of (A) the date the individual reaches 65

years of age, (B) the date the individual is covered under any group health plan not maintained by the employer or any other health care service plan or insurer, regardless of whether that coverage is less valuable, (C) the date the individual becomes entitled to Medicare under Title XVIII of the Social Security Act, (D) five years from the date on which continuation coverage under COBRA or Cal-COBRA was scheduled to end for the former spouse, or (E) the date on which the employer or former employer terminates its group contract with the insurer and ceases to provide coverage for any active employees through that insurer, in which case the insurer shall notify the former spouse of the right to a conversion policy.

(d) (1) If the premium charged to the employer for a specific employee or dependent eligible under this section is adjusted for the age of the specific employee, or eligible dependent, on other than a composite basis, the rate for continuation coverage under this section shall not exceed 102 percent of the premium charged by the insurer to the employer for an employee of the same age as the former employee electing continuation coverage in the case of an individual who was eligible for COBRA, and 110 percent in the case of an individual who was eligible for Cal-COBRA. If the coverage continued is that of a former spouse, the premium charged shall not exceed 102 percent of the premium charged by the plan to the employer for an employee of the same age as the former spouse selecting continuation coverage in the case of an individual who was eligible for COBRA, and 110 percent in the case of an individual who was eligible for Cal-COBRA.

(2) If the premium charged to the employer for a specific employee or dependent eligible under this section is not adjusted for age of the specific employee, or eligible dependent, then the rate for continuation coverage under this section shall not exceed 213 percent of the applicable current group rate. For purposes of this section, the "applicable current group rate" means the total premiums charged by the insurer for coverage for the group, divided by the relevant number of covered persons.

(3) However, in computing the premiums charged to the specific employer group, the insurer shall not include consideration of the specific medical care expenditures for beneficiaries receiving continuation coverage pursuant to this section.

(e) For purposes of this section, "COBRA" means Section 4980B of Title 26 of the United States Code, Section 1161 et seq. of Title 29 of the United States Code, and Section 300bb of Title 42 of the United States Code, as added by the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272), and as amended.

(f) For purposes of this section, "Cal-COBRA" means the continuation coverage that must be offered pursuant to Article 1.7 (commencing with Section 10128.50), or Article 4.5 (commencing with Section 1366.20) of Chapter 2.2 of Division 2 of the Health and Safety Code.

(g) For the purposes of this section, "former spouse" means either an individual who is divorced from an employee or former employee or an individual who was married to an employee or former employee at the time of the death of the employee or former employee.

(h) Every group benefit plan evidence of coverage that is issued, amended, or renewed after January 1, 1999, shall contain a description of the provisions and eligibility requirements for the continuation coverage offered pursuant to this section.

(i) This section shall take effect on January 1, 1999.

SEC. 15. Section 10128.51 of the Insurance Code is amended to read:

10128.51. (a) "Continuation coverage" means extended coverage under the group benefit plan under which an eligible employee or eligible dependent is currently covered, or, in the case of a termination of the group benefit plan or an employer open enrollment period, extended coverage under the group benefit plan currently offered by the employer.

(b) "Group benefit plan" has the same meaning as "health benefit plan" defined in Section 10700, including group policies of vision-only and dental-only coverage, provided pursuant to Chapter 8 (commencing with Section 10700) to an employer with 2 to 19 eligible employees, as defined in Section 10700.

(c) "Qualified beneficiary" means any individual who, on the day before the qualifying event, is covered under a group benefit plan offered by a disability insurer pursuant to Article 1 (commencing with Section 10700) of Chapter 8, and has a qualifying event, as defined in subdivision (d).

(d) "Qualifying event" means any of the following events that, but for the election of continuation coverage under this article, would result in a loss of coverage under the group benefit plan to a qualified beneficiary:

(1) The death of the covered employee.

(2) The termination of employment or reduction in hours of the covered employee's employment, except that termination for gross misconduct does not constitute a qualifying event.

(3) The divorce or legal separation of the covered employee from the covered employee's spouse.

(4) The loss of dependent status by a dependent enrolled in the group benefit plan.

(5) With respect to a covered dependent only, the covered employee's entitlement to benefits under Title XVIII of the United States Social Security Act (Medicare).

(e) "Employer" means any employer that meets the definition of "small employer" as set forth in Section 10700 and (1) employed 2 to 19 eligible employees on at least 50 percent of its working days during the preceding calendar year, or, if the employer was not in business during any part of the preceding calendar year, employed 2 to 19

eligible employees on at least 50 percent of its working days during the preceding calendar quarter, (2) has contracted for health care coverage through a group benefit plan offered by a disability insurer, and (3) is not subject to Section 4980B of the United States Internal Revenue Code or Chapter 18 of the Employee Retirement Income Security Act, 29 U.S.C. Section 1161 et seq.

(f) "Core coverage" means coverage for hospital, medical, or surgical benefits provided under the group benefit plan that a qualified beneficiary was receiving immediately prior to the qualifying event, other than noncore coverage.

(g) "Noncore coverage" means coverage for vision and dental care.

SEC. 16. Section 10128.52 of the Insurance Code is amended to read:

10128.52. The continuation coverage requirements of this article do not apply to the following individuals:

(a) Individuals who are entitled to Medicare benefits or become entitled to Medicare benefits pursuant to Title XVIII of the United States Social Security Act, as amended or superseded. Entitlement to Medicare Part A only constitutes entitlement to benefits under Medicare.

(b) Individuals who have other hospital, medical, or surgical coverage, or who are covered or become covered under another group benefit plan, including a self-insured employee welfare benefit plan, that provides coverage for individuals and that does not impose any exclusion or limitation with respect to any preexisting condition of the individual, other than a preexisting condition limitation or exclusion that does not apply to or is satisfied by the qualified beneficiary pursuant to Sections 10198.6 and 10198.7. A group conversion option under any group benefit plan shall not be considered as an arrangement under which an individual is or becomes covered.

(c) Individuals who are covered, become covered, or are eligible for federal COBRA coverage pursuant to Section 4980B of the United States Internal Revenue Code or Chapter 18 of the Employee Retirement Income Security Act, 29 U.S.C. Section 1161 et seq.

(d) Individuals who are covered, become covered, or are eligible for coverage pursuant to Chapter 6A of the Public Health Service Act, 42 U.S.C. Section 300bb-1 et seq.

(e) Qualified beneficiaries who fail to meet the requirements of subdivision (b) of Section 10128.55 regarding notification of a qualifying event or election of continuation coverage within the specified time limits.

(f) Qualified beneficiaries who fail to submit the correct premium amount required by subdivision (b) of Section 10128.55 and Section 10128.57, in accordance with the terms and conditions of the policy or contract, or fail to satisfy other terms and conditions of the policy or contract.

SEC. 17. Section 10128.53 of the Insurance Code is amended to read:

10128.53. (a) Every disability insurer, that provides coverage under a group benefit plan to an employer, including those policies and contracts that provide vision-only and dental-only benefits, as defined in Section 10128.51, shall offer continuation coverage, pursuant to this section, to a qualified beneficiary under the contract upon a qualifying event without evidence of insurability. The qualified beneficiary shall, upon election, be able to continue his or her coverage under the group benefit plan, subject to the contract's terms and conditions, and subject to the requirements of this section. Except as otherwise provided in this section, continuation coverage shall be provided under the same terms and conditions that apply to similarly situated individuals under the group benefit plan.

(b) Every disability insurer shall also offer the continuation coverage to a qualified beneficiary who (1) elects continuation coverage under a group benefit plan as defined in this article or in Section 1366.21 of the Health and Safety Code, but whose continuation coverage is terminated under the group benefit plan pursuant to subdivision (b) of Section 10128.57, prior to any other termination date specified in Section 10128.57, or (2) who elects coverage through the disability insurer during any employer open enrollment, and the employer has contracted with the disability insurer to provide coverage to the employer's active employees. This continuation coverage shall be provided only for the balance of the period that the qualified beneficiary would have remained covered under the prior group benefit plan had the employer not terminated the contract with the previous insurer or health care service plan.

(c) Every disability insurer shall offer a qualified beneficiary the ability to elect the same core, noncore, or core and noncore coverage that the qualified beneficiary had immediately prior to the qualifying event.

(d) Any child who is born to a former employee who is a qualified beneficiary who has elected continuation coverage pursuant to this section, or a child who is placed for adoption with a former employee who is a qualified beneficiary who has elected continuation coverage pursuant to this article during the period of continuation coverage provided by this article shall be considered a qualified beneficiary entitled to receive benefits pursuant to this article for the remainder of the period that the former employee is covered pursuant to this article, if the child is enrolled under a group benefit plan as a dependent of that former employee who is a qualified beneficiary within 30 days of the child's birth or placement for adoption.

(e) An individual who becomes a qualified beneficiary pursuant to this article shall continue to receive coverage pursuant to this article until continuation coverage is terminated at the qualified beneficiary's election or pursuant to Section 10128.57, whichever comes first, even if the employer that sponsored the group benefit

plan that is continued subsequently becomes subject to Section 4980B of the United States Internal Revenue Code of Chapter 18 of the Employee Retirement Income Security Act, 29 U.S.C. Sec. 1161 et seq.

(f) A qualified beneficiary electing coverage pursuant to this section shall be considered part of the group benefit plan and treated as similarly situated employees for contract purposes, unless otherwise specified in this article.

SEC. 18. Section 10128.54 of the Insurance Code is amended to read:

10128.54. (a) Every insurer's evidence of coverage for group benefit plans subject to this article, that is issued, amended, or renewed on or after January 1, 1999, shall disclose to covered employees of group benefit plans subject to this article the ability to continue coverage pursuant to this article, as required by this section.

(b) This disclosure shall state that all insureds who are eligible to be qualified beneficiaries, as defined in subdivision (c) of Section 10128.51, shall be required, as a condition of receiving benefits pursuant to this article, to notify, in writing, the insurer, or the employer if the employer contracts to perform the administrative services as provided for in Section 10128.55, of all qualifying events as specified in paragraphs (1), (3), (4), and (5) of subdivision (d) of Section 10128.51 within 60 days of the date of the qualifying event. This disclosure shall inform insureds that failure to make the notification to the insurer, or to the employer when under contract to provide the administrative services, within the required 60 days will disqualify the qualified beneficiary from receiving continuation coverage pursuant to this article. The disclosure shall further state that a qualified beneficiary who wishes to continue coverage under the group benefit plan pursuant to this article must request the continuation in writing and deliver the written request, by first-class mail, or other reliable means of delivery, including personal delivery, express mail, or private courier company, to the disability insurer, or to the employer if the plan has contracted with the employer for administrative services pursuant to subdivision (d) of Section 10128.55, within the 60-day period following the later of (1) the date that the insured's coverage under the group benefit plan terminated or will terminate by reason of a qualifying event, or (2) the date the insured was sent notice pursuant to subdivision (e) of Section 10128.55 of the ability to continue coverage under the group benefit plan. The disclosure required by this section shall also state that a qualified beneficiary electing continuation shall pay to the disability insurer, in accordance with the terms and conditions of the policy or contract, which shall be set forth in the notice to the qualified beneficiary pursuant to subdivision (d) of Section 10128.55, the amount of the required premium payment, as set forth in Section 10128.56. The disclosure shall further require that the qualified beneficiary's first premium payment required to establish premium

payment be delivered by first-class mail, certified mail, or other reliable means of delivery, including personal delivery, express mail, or private courier company, to the disability insurer, or to the employer if the employer has contracted with the insurer to perform the administrative services pursuant to subdivision (d) of Section 10128.55, within 45 days of the date the qualified beneficiary provided written notice to the insurer or the employer, if the employer has contracted to perform the administrative services, of the election to continue coverage in order for coverage to be continued under this article. This disclosure shall also state that the first premium payment must equal an amount sufficient to pay all required premiums and all premiums due, and that failure to submit the correct premium amount within the 45-day period will disqualify the qualified beneficiary from receiving continuation coverage pursuant to this article.

(c) The disclosure required by this section shall also describe separately how qualified beneficiaries whose continuation coverage terminates under a prior group benefit plan pursuant to Section 10128.57 may continue their coverage for the balance of the period that the qualified beneficiary would have remained covered under the prior group benefit plan, including the requirements for election and payment. The disclosure shall clearly state that continuation coverage shall terminate if the qualified beneficiary fails to comply with the requirements pertaining to enrollment in, and payment of premiums to, the new group benefit plan within 30 days of receiving notice of the termination of the prior group benefit plan.

(d) Prior to August 1, 1998, every insurer shall provide to all covered employees of employers subject to this article written notice containing the disclosures required by this section, or shall provide to all covered employees of employers subject to this article a new or amended evidence of coverage that includes the disclosures required by this section. Any insurer that, in the ordinary course of business, maintains only the addresses of employer group purchasers of benefits, and does not maintain addresses of covered employees, may comply with the notice requirements of this section through the provision of the notices to its employer group purchases of benefits.

(e) Every disclosure form issued, amended, or renewed on and after January 1, 1999, for a group benefit plan subject to this article shall provide a notice that, under state law, an insured may be entitled to continuation of group coverage and that additional information regarding eligibility for this coverage may be found in the evidence of coverage.

SEC. 19. Section 10128.55 of the Insurance Code is amended to read:

10128.55. (a) Every group benefit plan contract between a disability insurer and an employer subject to this article that is issued, amended, or renewed on or after July 1, 1998, shall require the employer to notify the insurer in writing of any employee who has

had a qualifying event, as defined in paragraph (2) of subdivision (d) of Section 10128.51, within 30 days of the qualifying event. The group contract shall also require the employer to notify the insurer, in writing, within 30 days of the date when the employer becomes subject to Section 4980B of the United States Internal Revenue Code or Chapter 18 of the Employee Retirement Income Security Act, 29 U.S.C. Sec. 1161 et seq.

(b) Every group benefit plan contract between a disability insurer and an employer subject to this article that is issued, amended, or renewed after July 1, 1998, shall require the employer to notify qualified beneficiaries currently receiving continuation coverage, whose continuation coverage will terminate under one group benefit plan prior to the end of the period the qualified beneficiary would have remained covered, as specified in Section 10128.57, of the qualified beneficiary's ability to continue coverage under a new group benefit plan for the balance of the period the qualified beneficiary would have remained covered under the prior group benefit plan. This notice shall be provided either 30 days prior to the termination or when all enrolled employees are notified, whichever is later.

Every disability insurer shall provide to the employer replacing a group benefit plan policy issued by the insurer, or to the employer's agent or broker representative, within 15 days of any written request, information in possession of the insurer reasonably required to administer the notification requirements of this subdivision and subdivision (c).

(c) Notwithstanding subdivision (a), the group benefit plan contract between the insurer and the employer shall require the employer to notify the successor plan in writing of the qualified beneficiaries currently receiving continuation coverage so that the successor plan, or contracting employer or administrator, may provide those qualified beneficiaries with the necessary premium information, enrollment forms, and instructions consistent with the disclosure required by subdivision (c) of Section 10128.54 and subdivision (e) of this section to allow the qualified beneficiary to continue coverage. This information shall be sent to all qualified beneficiaries who are enrolled in the group benefit plan and those qualified beneficiaries who have been notified, pursuant to Section 10128.54 of their ability to continue their coverage and may still elect coverage within the specified 60-day period. This information shall be sent to the qualified beneficiary's last known address, as provided to the employer by the health care service plan or, disability insurer currently providing continuation coverage to the qualified beneficiary. The successor insurer shall not be obligated to provide this information to qualified beneficiaries if the employer or prior insurer or health care service plan fails to comply with this section.

(d) A disability insurer may contract with an employer, or an administrator, to perform the administrative obligations of the plan

as required by this article, including required notifications and collecting and forwarding premiums to the insurer. Except for the requirements of subdivisions (a), (b), and (c), this subdivision shall not be construed to permit an insurer to require an employer to perform the administrative obligations of the insurer as required by this article as a condition of the issuance or renewal of coverage.

(e) Every insurer, or employer or administrator that contracts to perform the notice and administrative services pursuant to this section, shall, within 14 days of receiving a notice of a qualifying event, provide to the qualified beneficiary the necessary premium information, enrollment forms, and disclosures consistent with the notice requirements contained in subdivisions (b) and (c) of Section 10128.54 to allow the qualified beneficiary to formally elect continuation coverage. This information shall be sent to the qualified beneficiary's last known address.

(f) Every insurer, employer or administrator that contracts to perform the notice and administrative services pursuant to this section shall, during the 180-day period ending on the date that continuation coverage is terminated pursuant to paragraphs (1), (3), and (5) of subdivision (a) of Section 10128.57, notify a qualified beneficiary who has elected continuation coverage pursuant to this article of the date that his or her coverage will terminate, and shall notify the qualified beneficiary of any conversion coverage available to that qualified beneficiary. This requirement shall not apply when the continuation coverage is terminated because the group contract between the insurer and the employer is being terminated.

SEC. 20. Section 10128.56 of the Insurance Code is amended to read:

10128.56. A qualified beneficiary electing continuation coverage shall pay to the disability insurer, on or before the due date of each payment but not more frequently than on a monthly basis, not more than 110 percent of the applicable rate charged for a covered employee or, in the case of dependent coverage, not more than 110 percent of the applicable rate charged to a similarly situated individual under the group benefit plan being continued under the group contract. In the case of a qualified beneficiary who is determined to be disabled pursuant to Title II or Title XVI of the United States Social Security Act, the qualified beneficiary shall be required to pay to the insurer an amount no greater than 150 percent of the group rate after the first 18 months of continuation coverage provided pursuant to this section. In no case shall an insurer charge an employer an additional fee for administering Cal-COBRA other than those incorporated in the risk adjusted employee risk rate as provided for in subdivision (t) of Section 10700.

SEC. 21. Section 10128.57 of the Insurance Code is amended to read:

10128.57. (a) The continuation coverage provided pursuant to this article shall terminate at the first to occur of the following:

(1) In the case of a qualified beneficiary who is eligible for continuation coverage pursuant to paragraph (2) of subdivision (d) of Section 10128.51, the date 18 months after the date the qualified beneficiary's benefits under the contract would otherwise have terminated because of a qualifying event.

(2) The end of the period for which premium payments were made, if the qualified beneficiary ceases to make payments or fails to make timely payments of a required premium, in accordance with the terms and conditions of the policy or contract. In the case of nonpayment of premiums, reinstatement shall be governed by the terms and conditions of the plan contract.

(3) In the case of a qualified beneficiary who is eligible to continuation coverage pursuant to paragraph (1), (3), (4), or (5) of subdivision (d) of Section 10116.51, the date 36 months after the date the qualified beneficiary's benefits under the contract would otherwise have terminated by reason of a qualifying event.

(4) The requirements of this article no longer apply to the qualified beneficiary pursuant to the provisions of Section 10128.52.

(5) In the case of a qualified beneficiary who is eligible for continuation coverage pursuant to paragraph (2) of subdivision (d) of Section 10128.51, and determined, under Title II or Title XVI of the Social Security Act, to be disabled any time during the first 60 days of continuation coverage, and the spouse or dependent who has elected coverage pursuant to this article, the date 29 months after the date the qualified beneficiary's benefits under the contract would otherwise have terminated because of a qualifying event. The qualified beneficiary shall notify the insurer, or the employer or administrator that contracts to perform administrative services, of the social security determination within 60 days of the date of determination letter and prior to the end of the original 18-month continuation coverage period in order to be eligible for coverage pursuant to this subdivision. If the qualified beneficiary is no longer disabled under Title II or Title XVI of the Social Security Act, the benefits provided in this paragraph shall terminate on the later of the date provided by paragraph (1), or the month that begins more than 31 days after the date of the final determination under Title II or Title XVI of the United States Social Security Act that the qualified beneficiary is no longer disabled. A qualified beneficiary eligible for 29 months of continuation coverage as a result of a disability shall notify the insurer, or the employer or administrator that contracts to perform the notice and administrative services, within 30 days of a determination that the qualified beneficiary is no longer disabled.

(6) In the case of a qualified beneficiary who is initially eligible for and elects continuation coverage pursuant to paragraph (2) of subdivision (d) of Section 10128.51, but who has another qualifying event, as described in paragraph (1), (3), (4), or (5) of subdivision (d) of Section 10128.51, within 18 months of the date of the first qualifying event, and has notified the insurer, or employer or

administrator under contract to provide administrative services, of the second qualifying event within 60 days of the date of the second qualifying event, the date 36 months after the date of the first qualifying event.

(7) The employer, or any successor employer or purchaser of the employer, ceases to provide any group benefit plan to his or her employees.

(8) The qualified beneficiary moves out of the insurer's service area, or the qualified beneficiary commits fraud or deception in the use of benefits.

(b) If the group benefits contracts between the insurer and the employer is terminated prior to the date the qualified beneficiary's continuation coverage would terminate pursuant to this section, coverage under the prior plan shall terminate and the qualified beneficiary may elect continuation coverage under the subsequent group benefit plan, if any, pursuant to the requirements of subdivision (b) of Section 10128.53 and subdivision (c) of Section 10128.54.

SEC. 22. Section 10128.58 of the Insurance Code is amended to read:

10128.58. A disability insurer subject to this article shall not be obligated to provide continuation coverage to a qualified beneficiary pursuant to this article if an insured fails to make the notification required by Section 10128.54, or if the employer of the insured fails to comply with Section 10128.55.

SEC. 23. Section 10194.8 of the Insurance Code is amended to read:

10194.8. (a) No Medicare supplement insurer shall deny or condition the issuance or effectiveness of Medicare supplement coverage, nor discriminate in the pricing of coverage, because of health status, claims experience, receipt of health care or medical condition of an applicant in the case of an application for a policy or certificate that is submitted prior to or during the six-month period beginning with the first day of the first month in which an individual is both 65 years of age or older and is enrolled for benefits under Medicare Part B. This section shall not be construed as preventing the exclusion of benefits for preexisting conditions as defined in paragraph (1) of subdivision (a) of Section 10195, except as provided for in paragraph (1) of subdivision (b).

(b) (1) In determining whether an exclusion of benefits for a preexisting condition may be applied to any person during the open enrollment period provided in this section, a Medicare supplement insurer shall credit the time the person was covered under creditable coverage, provided the individual becomes eligible for coverage under the Medicare supplement policy:

(A) Within 180 days of the termination of any creditable coverage if the creditable coverage is offered through employment or sponsored by an employer and if the Medicare supplement insurance

is offered through succeeding employment or sponsored by a succeeding employer, and is not in violation of the Medicare Secondary Payer provision of Section 1862(b) of the Social Security Act (42 U.S.C. Sec. 1395y(b)).

(B) In cases not covered by paragraph (1), within 30 days of the termination of any other qualifying prior coverage.

(2) For purposes of this section, "creditable coverage" means any of the following:

(A) Any individual or group policy, contract, or program that is written or administered by a disability insurer, 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, coverage for onsite medical clinics, disability income, Medicare supplement, long-term care insurance, dental coverage, vision coverage, 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) The federal Medicare program pursuant to Title XVIII of the Social Security Act.

(C) The medicaid program pursuant to Title XIX of the Social Security Act.

(D) Any other publicly sponsored program, provided in this state or elsewhere, of medical, hospital, and surgical care.

(E) 10 U.S.C.A. Chapter 55 (commencing with Section 1071) (Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)).

(F) A medical care program of the Indian Health Service or of a tribal organization.

(G) A state health benefits risk pool.

(H) A health plan offered under 5 U.S.C.A. Chapter 89 (commencing with Section 8901) (Federal Employees Health Benefits Program (FEHBP)).

(I) A public health plan as defined in federal regulations authorized by Section 2701(c)(1)(I) of the Public Health Service Act, as amended by Public Law 104-191, the Health Insurance Portability and Accountability Act of 1996.

(J) A health benefit plan under Section 5(e) of the Peace Corps Act (22 U.S.C.A. Sec. 2504(e)).

(K) Any other creditable coverage as defined by subdivision (c) of Section 2701 of Title XXVII of the federal Public Health Services Act (42 U.S.C. Sec. 300gg(c)).

(c) An individual enrolled in Medicare Part B by reason of disability will be entitled to open enrollment described in this section for six months after he or she reaches age 65. Every insurer shall make available to every applicant qualified for open enrollment all policies and certificates offered by that insurer at the time of application. Insurers shall not discourage sales during the open enrollment period by any means, including the altering of the commission structure.

(d) An individual who is 65 years of age or older and enrolled in Medicare Part B is entitled to open enrollment described in this section for six months following:

(1) Receipt of a notice of termination or, if no notice is received, the effective date of termination, from any employer-sponsored health plan including an employer-sponsored retiree health plan. For purposes of this section, "employer-sponsored retiree health plan" includes any coverage for medical expenses that is directly or indirectly sponsored or established by an employer for employees or retirees, their spouses, dependents, or other included insureds.

(2) Termination of health care services for a military retiree or the retiree's Medicare eligible spouse or dependent as a result of a military base closure.

(e) An individual who is 65 years of age or older and enrolled in Medicare Part B is entitled to open enrollment described in this section if the individual was covered under a policy, certificate, or contract providing Medicare supplement coverage but that coverage terminated because the individual established residence at a location not served by the plan.

(f) An individual shall be entitled to an annual open enrollment period lasting 30 days or more, commencing with the individual's birthday, during which time that person may purchase any Medicare supplement coverage, with the exception of a Medicare Select policy, that offers benefits equal to or lesser than those provided by the previous coverage. During this open enrollment period, no Medicare supplement insurer that falls under this provision shall deny or condition the issuance or effectiveness of Medicare supplement coverage, nor discriminate in the pricing of coverage, because of health status, claims experience, receipt of health care, or medical condition of the individual if, at the time of the open enrollment period, the individual is covered under another Medicare supplement policy or contract. A Medicare supplement insurer shall notify a policyholder of his or her rights under this subdivision at least 30 and no more than 60 days before the beginning of the open enrollment period.

SEC. 24. 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 or no share-of-cost Medi-Cal coverage 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 or no share-of-cost Medi-Cal coverage was the reason for declining enrollment provided that, if the individual was covered under another employer health benefit 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, legal separation, divorce, or loss of no share-of-cost Medi-Cal coverage.

(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.

(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 boldface 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 12 months as well as a six-month preexisting condition exclusion, unless the individual meets the criteria specified in paragraph (1), (2), or (3).

(5) The individual is an employee or dependent who meets the criteria described in paragraph (1) and was under a COBRA continuation provision and the coverage under that provision has been exhausted. For purposes of this section, the definition of "COBRA" set forth in subdivision (e) of Section 10116.5 shall apply.

(6) The individual is a dependent of an enrolled eligible employee who has lost or will lose his or her no share-of-cost Medi-Cal coverage and requests enrollment within 30 days of notification of this loss of coverage.

(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) "Creditable coverage" means:

(1) Any individual or group policy, contract or program, that is written or administered by a disability insurance company, 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, coverage for onsite medical clinics, 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.

(5) 10 U.S.C.A. Chapter 55 (commencing with Section 1071) (Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)).

(6) A medical care program of the Indian Health Service or of a tribal organization.

(7) A state health benefits risk pool.

(8) A health plan offered under 5 U.S.C.A. Chapter 89 (commencing with Section 8901) (Federal Employees Health Benefits Program (FEHBP)).

(9) A public health plan as defined in federal regulations authorized by Section 2701(c)(1)(I) of the Public Health Service Act, as amended by Public Law 104-191, the Health Insurance Portability and Accountability Act of 1996.

(10) A health benefit plan under Section 5(e) of the Peace Corps Act (22 U.S.C.A. Sec. 2504(e)).

(11) Any other creditable coverage as defined by subsection (c) of Section 2701 of Title XXVII of the federal Public Health Services Act (42 U.S.C. Sec. 300gg(c)).

(e) "Affiliation period" means a period that, under the terms of the health benefit plan, must expire before health care services under the plan become effective.

(f) "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. 25. Section 10273.4 of the Insurance Code is amended to read:

10273.4. All disability insurers writing, issuing, or administering group health benefit plans shall make all of these health benefit plans renewable with respect to the policyholder, contractholder, or employer except as follows:

(a) For nonpayment of the required premiums by the policyholder, contractholder, or employer.

(b) For fraud or other intentional misrepresentation by the policyholder, contractholder, or employer.

(c) For noncompliance with a material health benefit plan contract provision.

(d) If the insurer ceases to provide or arrange for the provision of health care services for new group health benefit plans in this state; provided, however, that the following conditions are satisfied:

(1) Notice of the decision to cease writing, issuing, or administering new or existing group health benefit plans in that state is provided to the commissioner and to either the policyholder, contractholder, or employer at least 180 days prior to discontinuation of that coverage.

(2) Group health benefit plans shall not be canceled for 180 days after the date of the notice required under paragraph (1) and for that business of a plan that remains in force, any disability insurer that

ceases to write, issue, or administer new group health benefit plans shall continue to be governed by this section with respect to business conducted under this section.

(3) Except as authorized under subdivision (h) of Section 10705, or unless the commissioner had made a determination pursuant to subdivision (q) of Section 10712, a disability insurer that ceases to write, issue, or administer new group health benefit plans in this state after the effective date of this section shall be prohibited from writing, issuing, or administering new group health benefit plans to employers in this state for a period of five years from the date of notice to the commissioner.

(e) If a disability insurer withdraws a group health benefit plan from the market; provided, that the plan notifies all affected contractholders, policyholders, or employers and the commissioner at least 90 days prior to the discontinuation of the health benefit plans, and that the insurer makes available to the contractholder, policyholder, or employer all health benefit plans that it makes available to new employer business without regard to the claims experience of health-related factors of insureds or individuals who may become eligible for the coverage.

(f) For the purposes of this section, "health benefit plan" shall have the same meaning as in subdivision (a) of Section 10198.6 and Section 10198.61.

(g) For the purposes of this section, "eligible employee" shall have the same meaning as in Section 10700, except that it applies to all health benefit plans issued to employer groups of two or more employees.

SEC. 26. Section 10273.6 of the Insurance Code is amended to read:

10273.6. All individual health benefit plans, except for short-term limited duration insurance, shall be renewable with respect to all eligible individuals or dependents at the option of the individual except as follows:

(a) For nonpayment of the required premiums or contributions by the individual in accordance with the terms of the health insurance coverage or the timeliness of the payments.

(b) For fraud or intentional misrepresentation of material fact under the terms of the coverage by the individual.

(c) Movement of the individual contractholder outside the service area but only if coverage is terminated uniformly without regard to any health status-related factor of covered individuals.

(d) If the disability insurer ceases to provide or arrange for the provision of health care services for new individual health benefit plans in this state; provided, however, that the following conditions are satisfied:

(1) Notice of the decision to cease new or existing individual health benefit plans in this state is provided to the commissioner and

to the individual policy or contractholder at least 180 days prior to discontinuation of that coverage.

(2) Individual health benefit plans shall not be canceled for 180 days after the date of the notice required under paragraph (1) and for that business of a disability insurer that remains in force, any disability insurer that ceases to offer for sale new individual health benefit plans shall continue to be governed by this section with respect to business conducted under this section.

(3) A disability insurer that ceases to write new individual health benefit plans in this state after the effective date of this section shall be prohibited from offering for sale individual health benefit plans in this state for a period of five years from the date of notice to the commissioner.

(e) If the disability insurer withdraws an individual health benefit plan from the market; provided, that the disability insurer notifies all affected individuals and the commissioner at least 90 days prior to the discontinuation of these plans, and that the disability insurer makes available to the individual all health benefit plans that it makes available to new individual businesses without regard to a health status-related factor of enrolled individuals or individuals who may become eligible for the coverage.

SEC. 27. Section 10700 of the Insurance Code is amended to read:

10700. As used in this chapter:

(a) "Agent or broker" means a person or entity licensed under Chapter 5 (commencing with Section 1621) of Part 2 of Division 1.

(b) "Benefit plan design" means a specific health coverage product issued by a carrier to small employers, to trustees of associations that include small employers, or to individuals if the coverage is offered through employment or sponsored by an employer. It includes services covered and the levels of copayment and deductibles, and it may include the professional providers who are to provide those services and the sites where those services are to be provided. A benefit plan design may also be an integrated system for the financing and delivery of quality health care services which has significant incentives for the covered individuals to use the system.

(c) "Board" means the Major Risk Medical Insurance Board.

(d) "Carrier" means any disability insurance company or any other entity that writes, issues, or administers health benefit plans that cover the employees of small employers, regardless of the situs of the contract or master policyholder. For the purposes of Articles 3 (commencing with Section 10719) and 4 (commencing with Section 10730), "carrier" also includes health care service plans.

(e) "Dependent" means the spouse or child of an eligible employee, subject to applicable terms of the health benefit plan covering the employee, and includes dependents of guaranteed association members if the association elects to include dependents

under its health coverage at the same time it determines its membership composition pursuant to subdivision (z).

(f) "Eligible employee" means either of the following:

(1) Any permanent employee who is actively engaged on a full-time basis in the conduct of the business of the small employer with a normal workweek of at least 30 hours, in the small employer's regular place of business, who has met any statutorily authorized applicable waiting period requirements. The term includes sole proprietors or partners of a partnership, if they are actively engaged on a full-time basis in the small employer's business, and they are included as employees under a health benefit plan of a small employer, but does not include employees who work on a part-time, temporary, or substitute basis. It includes any eligible employee as defined in this paragraph who obtains coverage through a guaranteed association. Employees of employers purchasing through a guaranteed association shall be deemed to be eligible employees if they would otherwise meet the definition except for the number of persons employed by the employer.

(2) Any member of a guaranteed association as defined in subdivision (z).

(g) "Enrollee" means an eligible employee or dependent who receives health coverage through the program from a participating carrier.

(h) "Financially impaired" means, for the purposes of this chapter, a carrier that, on or after the effective date of this chapter, is not insolvent and is either:

(1) Deemed by the commissioner to be potentially unable to fulfill its contractual obligations.

(2) Placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

(i) "Fund" means the California Small Group Reinsurance Fund.

(j) "Health benefit plan" means a policy or contract written or administered by a carrier that arranges or provides health care benefits for the covered eligible employees of a small employer and their dependents. 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, 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.

(k) "In force business" means an existing health benefit plan issued by the carrier to a small employer.

(*l*) "Late enrollee" means an eligible employee or dependent who has declined health coverage under a health benefit plan offered by a small 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 small employer, provided that the initial enrollment period shall be a period of at least 30 days. It also means any member of an association that is a guaranteed association as well as any other person eligible to purchase through the guaranteed association when that person has failed to purchase coverage during the initial enrollment period provided under the terms of the guaranteed association's health benefit plan and who subsequently requests enrollment in the plan, provided that the initial enrollment period shall be a period of at least 30 days. However, an eligible employee, another person eligible for coverage through a guaranteed association pursuant to subdivision (z), or dependent shall not be considered a late enrollee if: (1) the individual meets all of the following: (A) was covered under another employer health benefit plan or no share-of-cost Medi-Cal coverage at the time the individual was eligible to enroll; (B) certified at the time of the initial enrollment that coverage under another employer health benefit plan or no share-of-cost Medi-Cal coverage 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) 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, the termination of the other plan's coverage, cessation of an employer's contribution toward an employee or dependent's coverage, death of the person through whom the individual was covered as a dependent, legal separation, divorce, or loss of no share-of-cost Medi-Cal coverage; and (D) requests enrollment within 30 days after termination of coverage or employer contribution toward coverage provided under another employer health benefit plan; (2) the individual is employed by an employer who 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; (4) (A) in the case of an eligible employee as defined in paragraph (1) of subdivision (f), the carrier cannot produce a written statement from the employer stating that the individual or the person through whom an individual was eligible to be covered as a dependent, prior to declining coverage, was provided with, and signed acknowledgment of, an explicit written notice in boldface 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 12 months as well as a six-month preexisting condition exclusion unless the individual meets

the criteria specified in paragraph (1), (2), or (3); (B) in the case of an eligible employee who is a guaranteed association member, the plan cannot produce a written statement from the guaranteed association stating that the association sent a written notice in boldface type to all potentially eligible association members at their last known address prior to the initial enrollment period informing members that failure to elect coverage during the initial enrollment period permits the plan to impose, at the time of the member'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 member can demonstrate that he or she meets the requirements of subparagraphs (A), (C), and (D) of paragraph (1) or paragraph (2) or (3); or (C) in the case of an employer or person who is not a member of an association, was eligible to purchase coverage through a guaranteed association, and did not do so, and would not be eligible to purchase guaranteed coverage unless purchased through a guaranteed association, the employer or person can demonstrate that he or she meets the requirements of subparagraphs (A), (C), and (D) of paragraph (1), or paragraph (2) or (3), or that he or she recently had a change in status that would make him or her eligible and that application for coverage was made within 30 days of the change; (5) the individual is an employee or dependent who meets the criteria described in paragraph (1) and was under a COBRA continuation provision and the coverage under that provision has been exhausted. For purposes of this section, the definition of "COBRA" set forth in subdivision (e) of Section 1373.62 shall apply; or (6) the individual is a dependent of an enrolled eligible employee who has lost or will lose his or her no share-of-cost Medi-Cal coverage and requests enrollment within 30 days after notification of this loss of coverage.

(m) "New business" means a health benefit plan issued to a small employer that is not the carrier's in force business.

(n) "Participating carrier" means a carrier that has entered into a contract with the program to provide health benefits coverage under this part.

(o) "Plan of operation" means the plan of operation of the fund, including articles, bylaws and operating rules adopted by the fund pursuant to Article 3 (commencing with Section 10719).

(p) "Program" means the Health Insurance Plan of California.

(q) "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.

(r) "Creditable coverage" means:

(1) Any individual or group policy, contract, or program, that is written or administered by a disability insurer, 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, coverage for onsite medical clinics, disability income, Medicare supplement, long-term care, 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.

(5) 10 U.S.C.A. Chapter 55 (commencing with Section 1071) (Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)).

(6) A medical care program of the Indian Health Service or of a tribal organization.

(7) A state health benefits risk pool.

(8) A health plan offered under 5 U.S.C.A. Chapter 89 (commencing with Section 8901) (Federal Employees Health Benefits Program (FEHBP)).

(9) A public health plan as defined in federal regulations authorized by Section 2701(c)(1)(I) of the Public Health Service Act, as amended by Public Law 104-191, the Health Insurance Portability and Accountability Act of 1996.

(10) A health benefit plan under Section 5(e) of the Peace Corps Act (22 U.S.C.A. Sec. 2504(e)).

(11) Any other creditable coverage as defined by subdivision (c) of Section 2701 of Title XXVII of the federal Public Health Services Act (42 U.S.C. Sec. 300gg(c)).

(s) "Rating period" means the period for which premium rates established by a carrier are in effect and shall be no less than six months.

(t) "Risk adjusted employee risk rate" means the rate determined for an eligible employee of a small employer in a particular risk category after applying the risk adjustment factor.

(u) "Risk adjustment factor" means the percent adjustment to be applied equally to each standard employee risk rate for a particular small employer, based upon any expected deviations from standard claims. This factor may not be more than 120 percent or less than 80 percent until July 1, 1996. Effective July 1, 1996, this factor may not be more than 110 percent or less than 90 percent.

(v) "Risk category" means the following characteristics of an eligible employee: age, geographic region, and family size of the employee, plus the benefit plan design selected by the small employer.

(1) No more than the following age categories may be used in determining premium rates:

Under 30
30–39
40–49
50–54
55–59
60–64
65 and over

However, for the 65 and over age category, separate premium rates may be specified depending upon whether coverage under the health benefit plan will be primary or secondary to benefits provided by the federal Medicare program pursuant to Title XVIII of the federal Social Security Act.

(2) Small employer carriers shall base rates to small employers using no more than the following family size categories:

(A) Single.
(B) Married couple.
(C) One adult and child or children.
(D) Married couple and child or children.

(3) (A) In determining rates for small employers, a carrier that operates statewide shall use no more than nine geographic regions in the state, have no region smaller than an area in which the first three digits of all its ZIP Codes are in common within a county and shall divide no county into more than two regions. Carriers shall be deemed to be operating statewide if their coverage area includes 90 percent or more of the state's population. Geographic regions established pursuant to this section shall, as a group, cover the entire state, and the area encompassed in a geographic region shall be separate and distinct from areas encompassed in other geographic regions. Geographic regions may be noncontiguous.

(B) In determining rates for small employers, a carrier that does not operate statewide shall use no more than the number of geographic regions in the state than is determined by the following formula: the population, as determined in the last federal census, of all counties which are included in their entirety in a carrier's service area divided by the total population of the state, as determined in the last federal census, multiplied by nine. The resulting number shall be rounded to the nearest whole integer. No region may be smaller than an area in which the first three digits of all its ZIP Codes are in common within a county and no county may be divided into more than two regions. The area encompassed in a geographic region shall be separate and distinct from areas encompassed in other geographic

regions. Geographic regions may be noncontiguous. No carrier shall have less than one geographic area.

(w) "Small employer" means either of the following:

(1) Any person, proprietary or nonprofit firm, corporation, partnership, public agency, or association that is actively engaged in business or service that, on at least 50 percent of its working days during the preceding calendar quarter, or preceding calendar year, employed at least two, but not more than 50, eligible employees, the majority of whom were employed within this state, that was not formed primarily for purposes of buying health insurance and in which a bona fide employer-employee relationship exists. In determining whether to apply the calendar quarter or calendar year test, the insurer shall use the test that ensures eligibility if only one test would establish eligibility. However, for purposes of subdivisions (b) and (h) of Section 10705, the definition shall include employers with at least three eligible employees until July 1, 1997, and two eligible employees thereafter. In determining the number of eligible employees, companies that are affiliated companies and that are eligible to file a combined income tax return for purposes of state taxation shall be considered one employer. Subsequent to the issuance of a health benefit plan to a small employer pursuant to this chapter, and for the purpose of determining eligibility, the size of a small employer shall be determined annually. Except as otherwise specifically provided, provisions of this chapter that apply to a small employer shall continue to apply until the health benefit plan anniversary following the date the employer no longer meets the requirements of this definition. It includes any small employer as defined in this paragraph who purchases coverage through a guaranteed association, and any employer purchasing coverage for employees through a guaranteed association.

(2) Any guaranteed association, as defined in subdivision (y), that purchases health coverage for members of the association.

(x) "Standard employee risk rate" means the rate applicable to an eligible employee in a particular risk category in a small employer group.

(y) "Guaranteed association" means a nonprofit organization comprised of a group of individuals or employers who associate based solely on participation in a specified profession or industry, accepting for membership any individual or employer meeting its membership criteria which (1) includes one or more small employers as defined in paragraph (1) of subdivision (w), (2) does not condition membership directly or indirectly on the health or claims history of any person, (3) uses membership dues solely for and in consideration of the membership and membership benefits, except that the amount of the dues shall not depend on whether the member applies for or purchases insurance offered by the association, (4) is organized and maintained in good faith for purposes unrelated to insurance, (5) has been in active existence on January 1, 1992, and for at least five

years prior to that date, (6) has been offering health insurance to its members for at least five years prior to January 1, 1992, (7) has a constitution and bylaws, or other analogous governing documents that provide for election of the governing board of the association by its members, (8) offers any benefit plan design that is purchased to all individual members and employer members in this state, (9) includes any member choosing to enroll in the benefit plan design offered to the association provided that the member has agreed to make the required premium payments, and (10) covers at least 1,000 persons with the carrier with which it contracts. The requirement of 1,000 persons may be met if component chapters of a statewide association contracting separately with the same carrier cover at least 1,000 persons in the aggregate.

This subdivision applies regardless of whether a master policy by an admitted insurer is delivered directly to the association or a trust formed for or sponsored by an association to administer benefits for association members.

For purposes of this subdivision, an association formed by a merger of two or more associations after January 1, 1992, and otherwise meeting the criteria of this subdivision shall be deemed to have been in active existence on January 1, 1992, if its predecessor organizations had been in active existence on January 1, 1992, and for at least five years prior to that date and otherwise met the criteria of this subdivision.

(z) "Members of a guaranteed association" means any individual or employer meeting the association's membership criteria if that person is a member of the association and chooses to purchase health coverage through the association. At the association's discretion, it may also include employees of association members, association staff, retired members, retired employees of members, and surviving spouses and dependents of deceased members. However, if an association chooses to include those persons as members of the guaranteed association, the association must so elect in advance of purchasing coverage from a plan. Health plans may require an association to adhere to the membership composition it selects for up to 12 months.

(aa) "Affiliation period" means a period that, under the terms of the health benefit plan, must expire before health care services under the plan become effective.

SEC. 28. Section 10705 of the Insurance Code is amended to read:

10705. Upon the effective date of this act:

(a) No group or individual policy or contract or certificate of group insurance or statement of group coverage providing benefits to employees of small employers as defined in this chapter shall be issued or delivered by a carrier subject to the jurisdiction of the commissioner regardless of the situs of the contract or master policyholder or of the domicile of the carrier nor, except as otherwise provided in Sections 10270.91 and 10270.92, shall a carrier provide

coverage subject to this chapter until a copy of the form of the policy, contract, certificate, or statement of coverage is filed with and approved by the commissioner in accordance with Sections 10290 and 10291, and the carrier has complied with the requirements of Section 10717.

(b) Each carrier, except a self-funded employer, shall fairly and affirmatively offer, market, and sell all of the carrier's benefit plan designs that are sold to, offered through, or sponsored by, small employers or associations that include small employers to all small employers in each geographic region in which the carrier makes coverage available or provides benefits. A carrier contracting to participate in the Voluntary Alliance Uniting Employers Purchasing Program shall be deemed to be in compliance with this requirement for a benefit plan design offered through the program in those geographic regions in which the carrier participates in the program and the benefit plan design is offered exclusively through the program.

(1) Nothing in this section shall be construed to require an association, or a trust established and maintained by an association to receive a master insurance policy issued by an admitted insurer and to administer the benefits thereof solely for association members, to offer, market or sell a benefit plan design to those who are not members of the association. However, if the association markets, offers or sells a benefit plan design to those who are not members of the association it is subject to the requirements of this section. This shall apply to an association that otherwise meets the requirements of paragraph (5) formed by merger of two or more associations after January 1, 1992, if the predecessor organizations had been in active existence on January 1, 1992, and for at least five years prior to that date and met the requirements of paragraph (5).

(2) A carrier which (A) effective January 1, 1992, and at least 20 years prior to that date, markets, offers, or sells benefit plan designs only to all members of one association and (B) does not market, offer or sell any other individual, selected group, or group policy or contract providing medical, hospital and surgical benefits shall not be required to market, offer, or sell to those who are not members of the association. However, if the carrier markets, offers or sells any benefit plan design or any other individual, selected group, or group policy or contract providing medical, hospital and surgical benefits to those who are not members of the association it is subject to the requirements of this section.

(3) Each carrier that sells health benefit plans to members of one association pursuant to paragraph (2) shall submit an annual statement to the commissioner which states that the carrier is selling health benefit plans pursuant to paragraph (2) and which, for the one association, lists all the information required by paragraph (4).

(4) Each carrier that sells health benefit plans to members of any association shall submit an annual statement to the commissioner

which lists each association to which the carrier sells health benefit plans, the industry or profession which is served by the association, the association's membership criteria, a list of officers, the state in which the association is organized, and the site of its principal office.

(5) For purposes of paragraphs (1) and (2), an association is a nonprofit organization comprised of a group of individuals or employers who associate based solely on participation in a specified profession or industry, accepting for membership any individual or small employer meeting its membership criteria, which do not condition membership directly or indirectly on the health or claims history of any person, which uses membership dues solely for and in consideration of the membership and membership benefits, except that the amount of the dues shall not depend on whether the member applies for or purchases insurance offered by the association, which is organized and maintained in good faith for purposes unrelated to insurance, which has been in active existence on January 1, 1992, and at least five years prior to that date, which has a constitution and bylaws, or other analogous governing documents which provide for election of the governing board of the association by its members, which has contracted with one or more carriers to offer one or more health benefit plans to all individual members and small employer members in this state.

(c) Each carrier shall make available to each small employer all benefit plan designs that the carrier offers or sells to small employers or to associations that include small employers. Notwithstanding subdivision (d) of Section 10700, for purposes of this subdivision, companies that are affiliated companies or that are eligible to file a consolidated income tax return shall be treated as one carrier.

(d) Each carrier shall do all of the following:

(1) Prepare a brochure that summarizes all of its benefit plan designs and make this summary available to small employers, agents and brokers upon request. The summary shall include for each benefit plan design information on benefits provided, a generic description of the manner in which services are provided, such as how access to providers is limited, benefit limitations, required copayments and deductibles, standard employee risk rates, an explanation of how creditable coverage is calculated if a preexisting condition or affiliation period is imposed, and a telephone number that can be called for more detailed benefit information. Carriers are required to keep the information contained in the brochure accurate and up to date, and, upon updating the brochure, send copies to agents and brokers representing the carrier. Any entity that provides administrative services only with regard to a benefit plan design written or issued by another carrier shall not be required to prepare a summary brochure which includes that benefit plan design.

(2) For each benefit plan design, prepare a more detailed evidence of coverage and make it available to small employers, agents and brokers upon request. The evidence of coverage shall

contain all information that a prudent buyer would need to be aware of in making selections of benefit plan designs. An entity that provides administrative services only with regard to a benefit plan design written or issued by another carrier shall not be required to prepare an evidence of coverage for that benefit plan design.

(3) Provide to small employers, agents, and brokers, upon request, for any given small employer the sum of the standard employee risk rates and the sum of the risk adjusted standard employee risk rates. When requesting this information, small employers, agents and brokers shall provide the carrier with the information the carrier needs to determine the small employer's risk adjusted employee risk rate.

(4) Provide copies of the current summary brochure to all agents or brokers who represent the carrier and, upon updating the brochure, send copies of the updated brochure to agents and brokers representing the carrier for the purpose of selling health benefit plans.

(5) Notwithstanding subdivision (d) of Section 10700, for purposes of this subdivision, companies that are affiliated companies or that are eligible to file a consolidated income tax return shall be treated as one carrier.

(e) Every agent or broker representing one or more carriers for the purpose of selling health benefit plans to small employers shall do all of the following:

(1) When providing information on a health benefit plan to a small employer but making no specific recommendations on particular benefit plan designs:

(A) Advise the small employer of the carrier's obligation to sell to any small employer any of the benefit plan designs it offers to small employers and provide them, upon request, with the actual rates that would be charged to that employer for a given benefit plan design.

(B) Notify the small employer that the agent or broker will procure rate and benefit information for the small employer on any benefit plan design offered by a carrier for whom the agent or broker sells health benefit plans.

(C) Notify the small employer that, upon request, the agent or broker will provide the small employer with the summary brochure required in paragraph (1) of subdivision (d) for any benefit plan design offered by a carrier whom the agent or broker represents.

(2) When recommending a particular benefit plan design or designs, advise the small employer that, upon request, the agent will provide the small employer with the brochure required by paragraph (1) of subdivision (d) containing the benefit plan design or designs being recommended by the agent or broker.

(3) Prior to filing an application for a small employer for a particular health benefit plan:

(A) For each of the benefit plan designs offered by the carrier whose benefit plan design the agent or broker is presenting, provide

the small employer with the benefit summary required in paragraph (1) of subdivision (d) and the sum of the standard employee risk rates for that particular employer.

(B) Notify the small employer that, upon request, the agent or broker will provide the small employer with an evidence of coverage brochure for each benefit plan design the carrier offers.

(C) Notify the small employer that, from July 1, 1993 to July 1, 1996, actual rates may be 20 percent higher or lower than the sum of the standard employee risk rates, and from July 1, 1996, and thereafter, actual rates may be 10 percent higher or lower than the sum of the standard employee risk rates depending on how the carrier assesses the risk of the small employer's group.

(D) Notify the small employer that, upon request, the agent or broker will submit information to the carrier to ascertain the small employer's sum of the risk adjusted standard employee risk rate for any benefit plan design the carrier offers.

(E) Obtain a signed statement from the small employer acknowledging that the small employer has received the disclosures required by paragraph (3) of subdivision (e) and by Section 10716.

(f) No carrier, agent, or broker shall induce or otherwise encourage a small employer to separate or otherwise exclude an eligible employee from a health benefit plan which, in the case of an eligible employee meeting the definition in paragraph (1) of subdivision (f) of Section 10700, is provided in connection with the employee's employment or which, in the case of an eligible employee as defined in paragraph (2) of subdivision (f) of Section 17000, is provided in connection with a guaranteed association.

(g) No carrier shall reject an application from a small employer for a benefit plan design provided:

(1) The small employer as defined by paragraph (1) of subdivision (w) of Section 10700 offers health benefits to 100 percent of its eligible employees as defined in paragraph (1) of subdivision (f) of Section 10700. Employees who waive coverage on the grounds that they have other group coverage shall not be counted as eligible employees.

(2) The small employer agrees to make the required premium payments.

(h) No carrier or agent or broker shall, directly or indirectly, engage in the following activities:

(1) Encourage or direct small employers to refrain from filing an application for coverage with a carrier because of the health status, claims experience, industry, occupation, or geographic location within the carrier's approved service area of the small employer or the small employer's employees.

(2) Encourage or direct small employers to seek coverage from another carrier or the program because of the health status, claims experience, industry, occupation, or geographic location within the

carrier's approved service area of the small employer or the small employer's employees.

(i) No carrier shall, directly or indirectly, enter into any contract, agreement, or arrangement with an agent or broker that provides for or results in the compensation paid to an agent or broker for a health benefit plan to be varied because of the health status, claims experience, industry, occupation, or geographic location of the small employer or the small employer's employees. This subdivision shall not apply with respect to a compensation arrangement that provides compensation to an agent or broker on the basis of percentage of premium, provided that the percentage shall not vary because of the health status, claims experience, industry, occupation, or geographic area of the small employer.

(j) Except in the case of a late insured, or for satisfaction of a preexisting condition clause in the case of initial coverage of an eligible employee, a disability insurer may not exclude any eligible employee or dependent who would otherwise be entitled to health care services on the basis of any of the following: the health status, the medical condition, including both physical and mental illnesses, the claims experience, the medical history, the genetic information, or the disability or evidence of insurability, including conditions arising out of acts of domestic violence of that employee or dependent. No health benefit plan may limit or exclude coverage for a specific eligible employee or dependent by type of illness, treatment, medical condition, or accident, except for preexisting conditions as permitted by Section 10198.7 or 10708.

(k) If a carrier enters into a contract, agreement, or other arrangement with a third-party administrator or other entity to provide administrative, marketing, or other services related to the offering of health benefit plans to small employers in this state, the third-party administrator shall be subject to this chapter.

(*l*) (1) With respect to the obligation to provide coverage newly issued under subdivision (d), the carrier may cease enrolling new small employer groups and new eligible employees as defined by paragraph (2) of subdivision (f) of Section 10700 if it certifies to the commissioner that the number of eligible employees and dependents, of the employers newly enrolled or insured during the current calendar year by the carrier equals or exceeds: (A) in the case of a carrier that administers any self-funded health benefits arrangement in California, 10 percent of the total number of eligible employees, or eligible employees and dependents, respectively, enrolled or insured in California by that carrier as of December 31 of the preceding year, or (B) in the case of a carrier that does not administer any self-funded health benefit arrangements in California, 8 percent of the total number of eligible employees, or eligible employees and dependents, respectively, enrolled or insured by the carrier in California as of December 31 of the preceding year.

(2) Certification shall be deemed approved if not disapproved within 45 days after submission to the commissioner. If that certification is approved, the small employer carrier shall not offer coverage to any small employers under any health benefit plans during the remainder of the current year. If the certification is not approved, the carrier shall continue to issue coverage as required by subdivision (d) and be subject to administrative penalties as established in Section 10718.

SEC. 29. Section 10708 of the Insurance Code is amended to read:

10708. (a) Preexisting condition provisions of health benefit plans shall not exclude coverage for a period beyond six months following the individual's effective date of coverage and may only relate to conditions for which medical advice, diagnosis, care, or treatment, including the use of prescription medications, was recommended by or received from a licensed health practitioner during the six months immediately preceding the effective date of coverage.

(b) A carrier that does not utilize a preexisting condition provision may impose a waiting or affiliation period, not to exceed 60 days, before the coverage issued subject to this chapter shall become effective. During the waiting or affiliation period, the carrier is not required to provide health care benefits and no premiums shall be charged to the subscriber or enrollee.

(c) In determining whether a preexisting condition provision or a waiting period applies to any person, a plan shall credit the time the person was covered under creditable coverage, provided the person becomes eligible for coverage under the succeeding plan contract within 62 days of termination of prior coverage, exclusive of any waiting or affiliation period, and applies for coverage with the succeeding health benefit plan contract within the applicable enrollment period. A plan shall also credit any time an eligible employee must wait before enrolling in the health benefit plan, including any postenrollment or employer-imposed waiting or affiliation 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 creditable coverage if the person becomes eligible for health coverage offered through employment or sponsored by an employer within 180 days, exclusive of any waiting or affiliation period, and applies for coverage under the succeeding health benefit plan within the applicable enrollment period.

(d) Group health benefit plans may not impose a preexisting conditions exclusion to the following:

(1) To a newborn individual, who, as of the last day of the 30-day period beginning with the date of birth, applied for coverage through the employer-sponsored plan.

(2) To a child who is adopted or placed for adoption before attaining 18 years of age and who, as of the last day of the 30-day period beginning with the date of adoption or placement for adoption, is covered under creditable coverage and applies for coverage through the employer-sponsored plan. This provision shall not apply if, for 63 continuous days, the child is not covered under any creditable coverage.

(3) To a condition relating to benefits for pregnancy or maternity care.

(e) A carrier 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 section concerning preexisting condition provisions and waiting or affiliation periods.

(f) In addition to the preexisting condition exclusions authorized by subdivision (a) and the waiting or affiliation period authorized by subdivision (b), carriers providing coverage to a guaranteed association may impose on employers or individuals purchasing coverage who would not be eligible for guaranteed coverage if they were not purchasing through the association a waiting or affiliation period, not to exceed 60 days, before the coverage issued subject to this chapter shall become effective. During the waiting or affiliation period, the carrier is not required to provide health care benefits and no premiums shall be charged to the insured.

SEC. 30. Section 10718.55 of the Insurance Code is amended to read:

10718.55. (a) Carriers may enter into contractual agreements with qualified associations, as defined in subdivision (b), under which these qualified associations may assume responsibility for performing specific administrative services, as defined in this section, for qualified association members. Carriers that enter into agreements with qualified associations for assumption of administrative services shall establish uniform definitions for the administrative services that may be provided by a qualified association or its third-party administrator. The carrier shall permit all qualified associations to assume one or more of these functions when the carrier determines the qualified association demonstrates that it has the administrative capacity to assume these functions.

For the purposes of this section, administrative services provided by qualified associations or their third-party administrators shall be services pertaining to eligibility determination, enrollment, premium collection, sales, or claims administration on a per-claim basis that would otherwise be provided directly by the carrier or through a third-party administrator on a commission basis or an agent or solicitor work force on a commission basis.

Each carrier that enters into an agreement with any qualified association for the provision of administrative services shall offer all qualified associations with which it contracts the same premium

discounts for performing those services the carrier has permitted the qualified association or its third-party administrator to assume. The carrier shall apply these uniform discounts to the carrier's risk adjusted employee risk rates after the carrier has determined the qualified association's risk adjusted employee risk rates pursuant to Section 10714. The carrier shall report to the department its schedule of discounts for each administrative service.

In no instance may a carrier provide discounts to qualified associations that are in any way intended to, or materially result in, a reduction in premium charges to the qualified association due to the health status of the membership of the qualified association. In addition to any other remedies available to the commissioner to enforce this chapter, the commissioner may declare a contract between a carrier and a qualified association for administrative services pursuant to this section null and void if the commissioner determines any discounts provided to the qualified association are intended to, or materially result in, a reduction in premium charges to the qualified association due to the health status of the membership of the qualified association.

(b) For the purposes of this section, a qualified association is a nonprofit corporation comprised of a group of individuals or employers who associate based solely on participation in a specified profession or industry, that conforms to all of the following requirements:

(1) It accepts for membership any individual or small employer meeting its membership criteria.

(2) It does not condition membership, directly or indirectly, on the health or claims history of any person.

(3) It uses membership dues solely for and in consideration of the membership and membership benefits, except that the amount of the dues shall not depend on whether the member applies for or purchases insurance offered by the association.

(4) It is organized and maintained in good faith for purposes unrelated to insurance.

(5) It existed on January 1, 1972, and has been in continuous existence since that date.

(6) It has a constitution and bylaws or other analogous governing documents that provide for election of the governing board of the association by its members.

(7) It offered, marketed, or sold health coverage to its members for 20 continuous years prior to January 1, 1993.

(8) It agrees to offer any plan contract only to association members.

(9) It agrees to include any member choosing to enroll in the plan contract offered by the association, provided that the member agrees to make required premium payments.

(10) It complies with all provisions of this article.

(11) It had at least 10,000 enrollees covered by association-sponsored plans immediately prior to enactment of Chapter 1128 of the Statutes of 1992.

(12) It applies any administrative cost at an equal rate to all members purchasing coverage through the qualified association.

(c) A qualified association shall comply with the requirements set forth in Section 10198.9.

(d) This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

SEC. 31. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

SEC. 32. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to comply with and conform to provisions of federal law, it is necessary for this act to take effect immediately.

CHAPTER 108

An act to add Section 4980.08 to the Business and Professions Code, relating to healing arts.

[Approved by Governor July 3, 1998. Filed with Secretary of State July 6, 1998.]

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

SECTION 1. Section 4980.08 is added to the Business and Professions Code, to read:

4980.08. (a) The title "licensed marriage, family and child counselor" or "marriage, family and child counselor" is hereby renamed "licensed marriage and family therapist" or "marriage and family therapist," respectively. Any reference in any statute or regulation to a "licensed marriage, family and child counselor" or "marriage, family and child counselor" shall be deemed a reference

to a "licensed marriage and family therapist" or "marriage and family therapist."

(b) Nothing in this section shall be construed to expand or constrict the scope of practice of a person licensed pursuant to this chapter.

(c) This section shall become operative July 1, 1999.

CHAPTER 109

An act to amend Section 31521 of, to add Section 31564.2 to, and to repeal and add Sections 31522 and 31593 of, the Government Code, relating to county employee retirement systems.

[Approved by Governor July 3, 1998. Filed with Secretary of State July 6, 1998.]

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

SECTION 1. Section 31521 of the Government Code is amended to read:

31521. The board of supervisors may provide that the fourth and fifth members, and in counties having a board consisting of nine members, the fourth, fifth, sixth, eighth, and ninth members, and in counties having a board of investments under Section 31520.2, the fifth, sixth, seventh, eighth, and ninth members of the board of investment, shall receive compensation at a rate of not more than one hundred dollars ($100) a meeting or meeting of a committee authorized by the entire board, for not more than five meetings per month, together with actual and necessary expenses for all members of the board.

SEC. 2. Section 31522 of the Government Code is repealed.

SEC. 3. Section 31522 is added to the Government Code, to read:

31522. The official duties of elected board members who are employees of the county or a district shall be included as part of their county or district employment and their board duties shall normally take precedence over any other duties. The elected board members who are county or district employees shall not receive any additional compensation by virtue of their election to the board.

SEC. 4. Section 31564.2 is added to the Government Code, to read:

31564.2. (a) If a district's participation in the retirement system is terminated pursuant to the provisions of Section 31564, the district shall remain liable to the retirement system for the district's share of any unfunded actuarial liability of the system which is attributable to the officers and employees of the district who either have retired or will retire under the retirement system.

(b) Unless otherwise developed by an actuarial source and approved by the board of retirement, the amount of the district's liability shall be the unfunded actuarial liability of the entire system, computed as described below, multiplied by a fraction:

(1) The numerator of which is the total amount required to be contributed to the plan by the withdrawing district for the last five years ending prior to the withdrawal date.

(2) The denominator of which is the total amount required to be contributed to the plan by all participating employers for the last five years.

The plan's total unfunded actuarial liability for this purpose shall be calculated on the basis of the actuarial assumptions used in the plan's most recent actuarial valuation, except that all district members shall be assumed to terminate as of the date of withdrawal.

(c) The district's liability shall be paid in accordance with a schedule determined by the retirement board over a period no longer than the period over which the plan's remaining unfunded actuarial liability is being amortized.

(d) The funding of the retirement benefits for the employees of a withdrawing agency is solely the responsibility of the withdrawing agency or the board of supervisors. Notwithstanding any other provision of law, no contracting agency shall fail or refuse to pay the employer's contribution required by this chapter or to pay the employer's contribution required by this chapter within the applicable time limitations. In dealing with a withdrawing district, the board of retirement shall take whatever action needed to ensure the actuarial soundness of the retirement system.

(e) The Legislature finds and declares that this section is declaratory of existing law, to the extent this section provides that upon withdrawal from the retirement system, a district shall remain liable for its share of the unfunded actuarial liability of the system. This section is intended to define the method of calculating the district's share of that unfunded actuarial liability.

SEC. 5. Section 31593 of the Government Code is repealed.

SEC. 6. Section 31593 is added to the Government Code, to read:

31593. The retirement board shall conduct an audit of the retirement system at least once every 12 months and report upon its financial condition. The retirement board may retain the services of a certified public accountant to perform the annual audit. That audit shall be performed in accordance with generally accepted auditing standards. The cost of the audit shall be considered a cost of the administration of the retirement system. The audit report shall address the financial condition of the retirement system, internal accounting controls, and compliance with applicable laws and regulations. A copy of the audit report shall he filed with the board of supervisors.

Nothing in this section shall preclude the retirement board from selecting the county auditor to perform the annual audit, and if so

done, the cost of that audit shall he considered a cost of the administration of the retirement system.

At the request of the county board of supervisors, the county auditor may audit the accounts of the retirement system. The expense of that audit shall not be a cost chargeable by the county to the retirement system.

CHAPTER 110

An act to amend Section 6254 of the Government Code and to amend Section 12050 of the Penal Code, relating to concealed weapons.

[Approved by Governor July 3, 1998. Filed with Secretary of State July 6, 1998.]

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

SECTION 1. Section 6254 of the Government Code, as amended by Section 1 of Chapter 13 of the Statutes of 1998, is amended to read:

6254. Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Contained in or related to:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (1).

(e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, which are obtained in confidence from any person.

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes, except that state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (c) of Section 13960, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files that reflect the analysis or conclusions of the investigating officer.

Other provisions of this subdivision notwithstanding, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or

requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 220, 261, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 220, 261, 262, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(3) Subject to the restrictions of Section 841.5 of the Penal Code and this subdivision, the current address of every individual arrested by the agency and the current address of the victim of a crime, where the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator as described in Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code, except that the address of the victim of any crime defined by Section 220, 261, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code shall remain confidential. Address information obtained pursuant to this paragraph shall not be used directly or indirectly to sell a product or service to any individual or group of individuals, and the requester shall execute a declaration to that effect under penalty of perjury.

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of the Education Code.

(h) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. However, the law of eminent domain shall not be affected by this provision.

(i) Information required from any taxpayer in connection with the collection of local taxes that is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.

(j) Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.

(k) Records the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

(*l*) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's legal affairs secretary, provided that public records shall not be transferred to the custody of the Governor's legal affairs secretary to evade the disclosure provisions of this chapter.

(m) In the custody of or maintained by the Legislative Counsel, except those records in the public data base maintained by the Legislative Counsel that are described in Section 10248.

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for.

(o) Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, where an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain guarantees from the United States Small Business Administration. The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making available to the public those portions of an application which are subject to disclosure under this chapter.

(p) Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), and Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, that reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or that provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under these chapters. Nothing in this subdivision shall be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this subdivision.

(q) Records of state agencies related to activities governed by Articles 2.6 (commencing with Section 14081), 2.8 (commencing with Section 14087.5), and 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code,

that reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or that provide instruction, advice, or training to employees.

Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. In the event that a contract for inpatient services that is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments until the time a contract or amendment is fully open to inspection by the public.

(r) Records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals that has been transmitted to the State Department of Health Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Division 3 of Title 4 of this code, that relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 or 11512 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

(u) (1) Information contained in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department that indicates when or where the applicant is vulnerable to attack or that concerns the applicant's medical or psychological history or that of members of his or her family.

(2) The home address and telephone number of peace officers, judges, court commissioners, and magistrates that are set forth in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department.

(3) The home address and telephone number of peace officers, judges, court commissioners, and magistrates that are set forth in licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department.

(v) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Part 6.3 (commencing with Section 12695), and Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Part 6.3 (commencing with Section 12695), or Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, on or after July 1, 1991, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract for health coverage that is entered into prior to July 1, 1991, is amended on or after July 1, 1991, the amendment, except for any portion containing the rates of payment shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (3).

(w) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after they have been fully executed.

(3) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (2).

(x) Financial data contained in applications for registration, or registration renewal, as a service contractor filed with the Director of the Department of Consumer Affairs pursuant to Chapter 20 (commencing with Section 9800) of Division 3 of the Business and Professions Code, for the purpose of establishing the service contractor's net worth, or, financial data regarding the funded accounts held in escrow for service contracts held in force in this state by a service contractor.

(y) (1) Records of the Managed Risk Medical Insurance Board related to activities governed by Part 6.2 (commencing with Section 12693) of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts entered into pursuant to Part 6.2 (commencing with Section 12693) of Division 2 of the Insurance Code, on or after January 1, 1998, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract entered into pursuant to Part 6.2 (commencing with Section 12693) of Division 2 of the Insurance Code is amended, the amendment shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto until the contract or amendments to a contract are open to inspection pursuant to paragraph (2) or (3).

(z) Records obtained pursuant to paragraph (2) of subdivision (c) of Section 2891.1 of the Public Utilities Code.

Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

Nothing in this section prevents any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act.

SEC. 2. Section 12050 of the Penal Code is amended to read:

12050. (a) (1) (A) The sheriff of a county, upon proof that the person applying is of good moral character, that good cause exists for the issuance, and that the person applying is a resident of the county or a city within the county, may issue to that person a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person in either one of the following formats:

(i) A license to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person.

(ii) Where the population of the county is less than 200,000 persons according to the most recent federal decennial census, a license to carry loaded and exposed in that county a pistol, revolver, or other firearm capable of being concealed upon the person.

(B) The chief or other head of a municipal police department of any city or city and county, upon proof that the person applying is of good moral character, that good cause exists for the issuance, and that the person applying is a resident of that city, may issue to that person a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person in either one of the following formats:

(i) A license to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person.

(ii) Where the population of the county in which the city is located is less than 200,000 persons according to the most recent federal decennial census, a license to carry loaded and exposed in that county a pistol, revolver, or other firearm capable of being concealed upon the person.

(C) The sheriff of a county or the chief or other head of a municipal police department of any city or city and county, upon proof that the person applying is of good moral character, that good cause exists for the issuance, and that the person applying is a person who has been deputized or appointed as a peace officer pursuant to subdivision (a) or (b) of Section 830.6 by that sheriff or that chief of police or other head of a municipal police department may issue to that person a license to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person. Direct or indirect fees for the issuance of a license pursuant to this subparagraph may be waived . The fact that an applicant for a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person has been deputized or appointed as a peace officer pursuant to subdivision (a) or (b) of Section 830.6 shall be considered only for the purpose of issuing a license pursuant to this

subparagraph, and shall not be considered for the purpose of issuing a license pursuant to subparagraph (A) or (B).

(2) (A) Except as provided in subparagraph (C), a license issued pursuant to subparagraph (A) or (B) of paragraph (1) is valid for any period of time not to exceed one year from the date of the license.

(B) A license issued pursuant to subparagraph (C) of paragraph (1) to a peace officer appointed pursuant to Section 830.6 is valid for any period of time not to exceed three years from the date of the license, except that the license shall be invalid upon the conclusion of the person's appointment pursuant to Section 830.6 if the three-year period has not otherwise expired or any other condition imposed pursuant to this section does not limit the validity of the license to a shorter time period.

(C) A license issued pursuant to subparagraph (A) or (B) of paragraph (1) is valid for any period of time not to exceed three years from the date of the license if the license is issued to any of the following individuals:

(i) A judge of a California court of record.

(ii) A full-time court commissioner of a California court of record.

(iii) A judge of a federal court.

(iv) A magistrate of a federal court.

(b) A license may include any reasonable restrictions or conditions which the issuing authority deems warranted, including restrictions as to the time, place, manner, and circumstances under which the person may carry a pistol, revolver, or other firearm capable of being concealed upon the person.

(c) Any restrictions imposed pursuant to subdivision (b) shall be indicated on any license issued.

(d) A license shall not be issued if the Department of Justice determines that the person is within a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(e) (1) The license shall be revoked by the local licensing authority if at any time either the local licensing authority is notified by the Department of Justice that a licensee is within a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, or the local licensing authority determines that the person is within a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(2) If at any time the Department of Justice determines that a licensee is within a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, the department shall immediately notify the local licensing authority of the determination.

(3) If the local licensing authority revokes the license, the Department of Justice shall be notified of the revocation pursuant to

Section 12053. The licensee shall also be immediately notified of the revocation in writing.

(f) (1) A person issued a license pursuant to this section may apply to the licensing authority for an amendment to the license to do one or more of the following:

(A) Add or delete authority to carry a particular pistol, revolver, or other firearm capable of being concealed upon the person.

(B) Authorize the licensee to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person.

(C) If the population of the county is less than 200,000 persons according to the most recent federal decennial census, authorize the licensee to carry loaded and exposed in that county a pistol, revolver, or other firearm capable of being concealed upon the person.

(D) Change any restrictions or conditions on the license, including restrictions as to the time, place, manner, and circumstances under which the person may carry a pistol, revolver, or other firearm capable of being concealed upon the person.

(2) When the licensee changes his or her address, the license shall be amended to reflect the new address and a new license shall be issued pursuant to paragraph (3).

(3) If the licensing authority amends the license, a new license shall be issued to the licensee reflecting the amendments.

(4) The licensee shall notify the licensing authority in writing within 10 days of any change in the licensee's place of residence. If the license is one to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person, then it may not be revoked solely because the licensee changes his or her place of residence to another county if the licensee has not breached any conditions or restrictions set forth in the license or has not fallen into a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code. If the license is one to carry loaded and exposed a pistol, revolver, or other firearm capable of being concealed upon the person, the license shall be revoked immediately if the licensee changes his or her place of residence to another county.

(5) An amendment to the license does not extend the original expiration date of the license and the license shall be subject to renewal at the same time as if the license had not been amended.

(6) An application to amend a license does not constitute an application for renewal of the license.

CHAPTER 111

An act to amend Section 3186 of the Civil Code, relating to public works.

[Approved by Governor July 3, 1998. Filed with
Secretary of State July 6, 1998.]

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

SECTION 1. Section 3186 of the Civil Code is amended to read:

3186. It shall be the duty of the public entity, upon receipt of a stop notice pursuant to this chapter, to withhold from the original contractor, or from any person acting under his or her authority, money or bonds (where bonds are to be issued in payment for the work of improvement) due or to become due to that contractor in an amount sufficient to answer the claim stated in the stop notice and to provide for the public entity's reasonable cost of any litigation thereunder. The public entity may satisfy this duty by refusing to release money held in escrow pursuant to Section 10263 or 22300 of the Public Contract Code.

CHAPTER 112

An act to amend Section 3307 of the Government Code, relating to public safety officers.

[Approved by Governor July 3, 1998. Filed with
Secretary of State July 6, 1998.]

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

SECTION 1. Section 3307 of the Government Code is amended to read:

3307. (a) No public safety officer shall be compelled to submit to a lie detector test against his or her will. No disciplinary action or other recrimination shall be taken against a public safety officer refusing to submit to a lie detector test, nor shall any comment be entered anywhere in the investigator's notes or anywhere else that the public safety officer refused to take, or did not take, a lie detector test, nor shall any testimony or evidence be admissible at a subsequent hearing, trial, or proceeding, judicial or administrative, to the effect that the public safety officer refused to take, or was subjected to, a lie detector test.

(b) For the purpose of this section, "lie detector" means a polygraph, deceptograph, voice stress analyzer, psychological stress evaluator, or any other similar device, whether mechanical or electrical, that is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual.

CHAPTER 113

An act to add Section 53356.9 to the Government Code, relating to community facilities districts.

[Approved by Governor July 3, 1998. Filed with Secretary of State July 6, 1998.]

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

SECTION 1. Section 53356.9 is added to the Government Code, to read:

53356.9. (a) Notwithstanding any other provision of this chapter or any other provision of law applicable to foreclosure action, the judgment of foreclosure and sale of a lot or parcel pursuant to this chapter shall not terminate or otherwise affect the rights of the holder of an easement in that lot or parcel.

(b) No provision of this section shall be interpreted as limiting any rights otherwise agreed to under existing contract.

CHAPTER 114

An act to amend Section 2483 of the Business and Professions Code, relating to podiatric medicine.

[Approved by Governor July 3, 1998. Filed with Secretary of State July 6, 1998.]

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

SECTION 1. Section 2483 of the Business and Professions Code is amended to read:

2483. (a) Each applicant for a certificate to practice podiatric medicine shall show by official transcript or other official evidence satisfactory to the board that he or she has successfully completed a medical curriculum extending over a period of at least four academic years in a college or school of podiatric medicine approved by the board. The total number of hours of all courses shall consist of a minimum of 4,000 hours.

The board, by regulation, shall adopt standards for determining equivalent training authorized by this section.

(b) The curriculum for all applicants shall provide for adequate instruction related to podiatric medicine in the following:

Alcoholism and other chemical substance detection

Local anesthesia

Anatomy, including embryology, histology, and neuroanatomy

Bacteriology

Behavioral science
Biochemistry
Biomechanics-foot and ankle
Child abuse detection
Dermatology
Didactic podiatry
Geriatric medicine
Human sexuality
Pediatrics
Neurology
Pathology, microbiology, and immunology
Pharmacology, including materia medica and toxicology
Physical and laboratory diagnosis
Physical medicine
Physiology
Podiatric medicine
Podiatric surgery
Preventive medicine, including nutrition
Psychiatric problem detection
Radiology and radiation safety
Spousal or partner abuse detection
Orthopedic surgery
Therapeutics
Women's health

(c) This section shall become operative on January 1, 2000.

CHAPTER 115

An act to amend Section 626.9 of the Penal Code, relating to firearms.

[Approved by Governor July 3, 1998. Filed with Secretary of State July 6, 1998.]

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

SECTION 1. Section 626.9 of the Penal Code is amended to read:

626.9. (a) This section shall be known, and may be cited, as the Gun-Free School Zone Act of 1995.

(b) Any person who possesses a firearm in a place that the person knows, or reasonably should know, is a school zone, as defined in paragraph (1) of subdivision (e), unless it is with the written permission of the school district superintendent, his or her designee, or equivalent school authority, shall be punished as specified in subdivision (f).

(c) Subdivision (b) shall not apply to the possession of a firearm under any of the following circumstances:

(1) Within a place of residence or place of business or on private property, if the place of residence, place of business, or private property is not part of the school grounds and the possession of the firearm is otherwise lawful.

(2) The firearm is an unloaded pistol, revolver, or other firearm capable of being concealed on the person and is in a locked container or within the locked trunk of a motor vehicle.

This section shall not prohibit or limit the otherwise lawful transportation of any other firearm, other than a pistol, revolver, or other firearm capable of being concealed on the person, in accordance with state law.

(3) When the person possessing the firearm reasonably believes that he or she is in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person or persons who has or have been found to pose a threat to his or her life or safety. This subdivision may not apply when the circumstances involve a mutual restraining order issued pursuant to Division 10 (commencing with Section 6200) of the Family Code absent a factual finding of a specific threat to the person's life or safety. Upon a trial for violating subdivision (b), the trier of a fact shall determine whether the defendant was acting out of a reasonable belief that he or she was in grave danger.

(4) The person is exempt from the prohibition against carrying a concealed firearm pursuant to subdivision (b), (d), (e), or (h) of Section 12027.

(d) Except as provided in subdivision (b), it shall be unlawful for any person with reckless disregard for the safety of another, to discharge, or attempt to discharge, a firearm in a school zone, as defined in paragraph (1) of subdivision (e).

The prohibition of this subdivision shall not apply to the discharge of a firearm to the extent that the conditions of paragraph (1) of subdivision (c) are satisfied.

(e) As used in this section, the following definitions shall apply:

(1) "School zone" means an area in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, and within a distance of 1,000 feet from the grounds of the public or private school.

(2) "Firearm" has the same meaning as that term is given in Section 12001.

(3) "Locked container" has the same meaning as that term is given in subdivision (c) of Section 12026.1.

(4) "Concealed firearm" has the same meaning as that term is given in Sections 12025 and 12026.1.

(f) (1) Any person who violates subdivision (b) by possessing a firearm in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, shall be punished by imprisonment in the state prison for two, three, or five years.

(2) Any person who violates subdivision (b) by possessing a firearm within a distance of 1,000 feet from the grounds of a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, shall be punished as follows:

(A) By imprisonment in the state prison for two, three, or five years, if any of the following circumstances apply:

(i) If the person previously has been convicted of any felony, or of any crime made punishable by Chapter 1 (commencing with Section 12000) of Title 2 of Part 4.

(ii) If the person is within a class of persons prohibited from possessing or acquiring a firearm pursuant to Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(iii) If the firearm is any pistol, revolver, or other firearm capable of being concealed upon the person and the offense is punished as a felony pursuant to Section 12025.

(B) By imprisonment in a county jail for not more than one year or by imprisonment in the state prison for two, three, or five years, in all cases other than those specified in subparagraph (A).

(3) Any person who violates subdivision (d) shall be punished by imprisonment in the state prison for three, five, or seven years.

(g) (1) Every person convicted under this section for a misdemeanor violation of subdivision (b) who has been convicted previously of a misdemeanor offense enumerated in Section 12001.6 shall be punished by imprisonment in a county jail for not less than three months, or if probation is granted or if the execution or imposition of sentence is suspended, it shall be a condition thereof that he or she be imprisoned in a county jail for not less than three months.

(2) Every person convicted under this section of a felony violation of subdivision (b) or (d) who has been convicted previously of a misdemeanor offense enumerated in Section 12001.6, if probation is granted or if the execution of sentence is suspended, it shall be a condition thereof that he or she be imprisoned in a county jail for not less than three months.

(3) Every person convicted under this section for a felony violation of subdivision (b) or (d) who has been convicted previously of any felony, or of any crime made punishable by Chapter 1 (commencing with Section 12000) of Title 2 of Part 4, if probation is granted or if the execution or imposition of sentence is suspended, it shall be a condition thereof that he or she be imprisoned in a county jail for not less than three months.

(4) The court shall apply the three-month minimum sentence specified in this subdivision, except in unusual cases where the interests of justice would best be served by granting probation or suspending the execution or imposition of sentence without the minimum imprisonment required in this subdivision or by granting probation or suspending the execution or imposition of sentence with

conditions other than those set forth in this subdivision, in which case the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by this disposition.

(h) Notwithstanding Section 12026, any person who brings or possesses a loaded firearm upon the grounds of a campus of, or buildings owned or operated for student housing, teaching, research, or administration by, a public or private university or college, that are contiguous or are clearly marked university property, unless it is with the written permission of the university or college president, his or her designee, or equivalent university or college authority, shall be punished by imprisonment in the state prison for two, three, or four years. Notwithstanding subdivision (k), a university or college shall post a prominent notice at primary entrances on noncontiguous property stating that firearms are prohibited on that property pursuant to this subdivision.

(h) Notwithstanding Section 12026, any person who brings or possesses a firearm upon the grounds of a campus of, or buildings owned or operated for student housing, teaching, research, or administration by, a public or private university or college, that are contiguous or are clearly marked university property, unless it is with the written permission of the university or college president, his or her designee, or equivalent university or college authority, shall be punished by imprisonment in the state prison for one, two, or three years. Notwithstanding subdivision (k), a university or college shall post a prominent notice at primary entrances on noncontiguous property stating that firearms are prohibited on that property pursuant to this subdivision.

(j) For purposes of this section, a firearm shall be deemed to be loaded when there is an unexpended cartridge or shell, consisting of a case which holds a charge of powder and a bullet or shot, in, or attached in any manner to, the firearm, including, but not limited to, in the firing chamber, magazine, or clip thereof attached to the firearm. A muzzle-loader firearm shall be deemed to be loaded when it is capped or primed and has a powder charge and ball or shot in the barrel or cylinder.

(k) This section shall not require that notice be posted regarding the proscribed conduct.

(*l*) This section shall not apply to a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in California, any person summoned by any of these officers to assist in making arrests or preserving the peace while he or she is actually engaged in assisting the officer, a member of the military forces of this state or of the United States who is engaged in the performance of his or her duties, a person holding a valid license to carry the firearm pursuant to Article 3 (commencing with Section 12050) of Chapter

1 of Title 2 of Part 4, or an armored vehicle guard, engaged in the performance of his or her duties, as defined in subdivision (e) of Section 7521 of the Business and Professions Code.

(m) This section shall not apply to a security guard authorized to carry a loaded firearm pursuant to Section 12031.

(n) This section shall not apply to an existing shooting range at a public or private school or university or college campus.

(o) This section shall not apply to an honorably retired peace officer authorized to carry a concealed or loaded firearm pursuant to subdivision (a) or (i) of Section 12027 or paragraph (1) or (8) of subdivision (b) of Section 12031.

CHAPTER 116

An act to amend Sections 31625.3 and 31657 of, and to add Section 31835.02 to, the Government Code, relating to county employee retirement systems.

[Approved by Governor July 3, 1998. Filed with Secretary of State July 6, 1998.]

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

SECTION 1. Section 31625.3 of the Government Code is amended to read:

31625.3. Notwithstanding any other provision of this chapter, contributions shall not be deducted from the salary of any member who was a member before or after March 7, 1973, of the retirement association, another county retirement system established under this chapter, or the Public Employees' Retirement System, and has total reciprocal service credit of not less than 30 years in the retirement association, or in the retirement association and another county retirement system established under this chapter, or the Public Employees' Retirement System, or a combination thereof.

This section shall apply only in counties of the first, second, and fourth class, as established by Sections 28020, 28022, 28023, and 28025, as amended by Chapter 1204 of the Statutes of 1971, but shall not apply in these counties unless and until it is adopted by a majority vote of the board of supervisors.

SEC. 2. Section 31657 of the Government Code is amended to read:

31657. Subject to Section 20588, whenever, as a result of the assumption by a county, fire authority, or district of firefighting or law enforcement functions performed by a city or the state subject to the Public Employees' Retirement Law, any person ceases to be employed by a city or the state and is employed by a county, fire authority, or district in which this chapter has become operative, that

person shall become a member of the retirement association of a county immediately upon entrance to the county service. That member of the county retirement system shall be entitled to service credit in the county retirement system for the service for which he or she was entitled to credit in the Public Employees' Retirement System at the time of cessation of employment by the city or the state, without necessity of payment of any additional contributions in respect to that service, when and if all of the following occur:

(a) The board of retirement receives certification from the Board of Administration of the Public Employees' Retirement System of the service with which the person was entitled to be credited by the Public Employees' Retirement System at the time of cessation of his or her city or state employment.

(b) There is paid into the county retirement fund of the county, an amount equal to the normal contributions of the person to the Public Employees' Retirement System, together with the interest credited thereto, which amount shall be credited to the individual account of the member in the county retirement system, and shall thereafter for all purposes be deemed to be the member's contribution to the county retirement system with respect to the service so certified.

(c) There is paid to the retirement system of the county an amount equal to the contributions of the city or state made to the Public Employees' Retirement System on account of service rendered by the person together with interest credited to the city or the state thereto.

(d) The board of retirement elects to apply this section as a prudent means of mitigating against potential adverse financial impact upon the county retirement system from the cost of disability retirements that may be applied for in the future by persons injured while being employed by the county, fire authority, or district after ceasing to be employed by a city or the state as a result of the assumption by a county, fire authority, or district of firefighting or law enforcement functions.

This section shall apply in a county of the first, the second, or the fourteenth class, as defined by Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28022, as amended by Chapter 43 of the Statutes of 1961, and Section 28023, as amended by Chapter 1204 of the Statutes of 1971.

SEC. 3. Section 31835.02 is added to the Government Code, to read:

31835.02. Notwithstanding any other provision of this part, Section 31835 shall also apply to any member who was a member of a retirement system established under this chapter and who subsequently becomes a member of the Public Employees' Retirement System, providing the period intervening between the periods for which active service was credited does not exceed 90 days,

and the member retires concurrently under both systems and is credited with the periods of service at the time of retirement.

This section hall only be operative in any county of the fourth class as described in Sections 28020 and 28025 if it is adopted by a majority vote of the board of supervisors.

CHAPTER 117

An act to amend Sections 42249.6, 42249.65, and 42249.8 of the Education Code, relating to school desegregation and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 3, 1998. Filed with Secretary of State July 6, 1998.]

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

SECTION 1. Section 42249.6 of the Education Code is amended to read:

42249.6. (a) Any and all of the school districts listed in subdivision (c), or any successor to those school districts, may be funded, for a voluntary desegregation program, of the kind discussed in Section 42249.

(b) (1) The district shall submit to the Department of Finance for approval an estimated claim no later than November 30 of the first fiscal year in which funding for its voluntary desegregation program is claimed and a report, which shall include all of the following:

(A) Certification that the desegregation plan is being implemented and an itemization of program expenditures to date.

(B) Certification that the district has met the match requirement.

(2) The Department of Finance shall review any estimated claim submitted pursuant to this section and include its estimate of approvable claims in budget estimates for both the current and next budget year. It is the intent of the Legislature that funding for the first year of program operation be provided as soon as practical following the first year of operation, and that funding for the second and subsequent years of program operation be included in the Budget Act for the appropriate year.

(c) This section shall be applicable only to the Grant Union High School District, the Lynwood Unified School District, and the Sausalito Elementary School District.

(d) This section shall become operative only if an appropriation is made for its purpose in the annual Budget Act or in another measure.

SEC. 2. Section 42249.65 of the Education Code is amended to read:

42249.65. (a) Any and all of the school districts listed in subdivision (b) may be funded, for a voluntary desegregation program of the kind discussed in Section 42249.

(b) This section shall be applicable only to the Allensworth-Richgrove Districts Collaborative, the Carlsbad Unified School District, and the San Dieguito Union High School District.

(c) This section shall become operative only if an appropriation is made for its purpose in the annual Budget Act or in another measure.

SEC. 3. Section 42249.8 of the Education Code is amended to read:

42249.8. (a) Commencing with the 1996–97 fiscal year and each fiscal year thereafter, the East San Jose group of school districts in collaboration may be funded for its voluntary desegregation program, of the kind discussed in Section 42249, in the Budget Act for the fiscal year that is the first fiscal year in which the voluntary desegregation program is in operation if the district meets the following requirements:

(1) The collaboration has commenced operation of a voluntary desegregation program, of the kind described in Section 42249, on the first day of school in the first fiscal year, but no sooner than the 1996-97 fiscal year, in which funding for its voluntary desegregation program is claimed.

(2) The voluntary desegregation program, of the kind discussed in Section 42249, is approved by the Controller.

(b) (1) The collaboration shall submit to the Department of Finance for approval an estimated claim no later than November 30 of the first fiscal year in which funding for its voluntary desegregation program is claimed and a report, which shall include all of the following:

(A) Certification that the desegregation plan is being implemented and an itemization of program expenditures to date.

(B) Certification that the district has met the match requirement.

(2) The Controller shall not release funding to the district prior to approval from the Department of Finance.

(c) As used in this section, the "East San Jose group of school districts in collaboration" means a coalition of school districts, composed of Alum Rock Union Elementary School District, Berryessa Union Elementary School District, Eastside Union High School District, Franklin-McKinley Elementary School District, Mt. Pleasant Elementary School District, and Oak Grove Elementary School District, that share resources to combat the detrimental effects of racial segregation.

(d) This section shall be implemented for those fiscal years for which the Director of Finance certifies, in writing, to the Secretary of State that sufficient funding has been appropriated for its purpose in the annual Budget Act or in another measure.

This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning

of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

To enable school districts entitled to voluntary desegregation funding to receive money to which they should be entitled, it is necessary that this act take effect immediately as an urgency statute.

CHAPTER 118

An act to amend Section 25666.5 of the Business and Professions Code, to amend Section 655.6 of the Harbors and Navigation Code, to amend Sections 11836, 11837, 11837.1, 11837.2, and 11837.4 of the Health and Safety Code, to amend Sections 670 and 1861.025 of the Insurance Code, to amend Sections 191.5, 193.7, 647.2, and 1203.1bb of the Penal Code, and to amend Sections 1803, 12802.5, 13106, 13202.8, 13350, 13352, 13352.3, 13352.4, 13352.5, 13353, 13353.1, 13353.2, 13353.3, 13353.7, 13551, 13557, 13558, 14601.2, 14601.3, 14905, 22651, 23103.5, 23158, 23217, and 23247 of, to add Sections 13380, 13382, 13384, 13386, 13388, 13390, and 13392 to, to add Division 11.5 (commencing with Section 23500) to, and to repeal Sections 13106, 13352.2, 14602, 23137, 23138, 23139, 23141, 23142, 23143, 23144, 23145, 23145.2, 23145.3, 23145.5, 23145.6, 23145.8, 23146, 23147, 23154, 23155, 23156, 23157, 23157.5, 23158.2, 23158.5, 23159, 23159.5, 23160, 23161, 23165, 23166, 23167, 23170, 23171, 23175, 23175.5, 23176, 23180, 23181, 23182, 23185, 23186, 23187, 23190, 23191, 23192, 23194, 23195, 23196, 23197, 23198, 23199, 23200, 23201, 23202, 23203, 23204, 23205, 23206, 23206.1, 23206.5, 23207, 23208, 23209, 23210, 23211, 23212, 23235, 23246, 23248, 23249, 23249.52, 23249.53, 23249.54, 23249.55, 23249.56, 23249.57, and 23249.58 of, the Vehicle Code, relating to vehicles.

[Approved by Governor July 3, 1998. Filed with Secretary of State July 6, 1998.]

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

SECTION 1. Section 25666.5 of the Business and Professions Code is amended to read:

25666.5. If a person is convicted of a violation of subdivision (b) of Section 25658, or Section 25658.5, 25661, or 25662 and is granted probation, the court may order, with the consent of the defendant, as a term and condition of probation, in addition to any other term and condition required or authorized by law, that the defendant participate in the program prescribed in Article 3 (commencing with Section 23509) of Chapter 12 of Division 11.5 of the Vehicle Code.

SEC. 1.2. Section 655.6 of the Harbors and Navigation Code is amended to read:

655.6. (a) It is an infraction for a person under the age of 21 years who has 0.01 percent or more, by weight, of alcohol in his or her blood

to operate any motorized vessel or manipulate water skis, an aquaplane, or a similar device.

(b) A person may be found to be in violation of subdivision (a) if the person was, at the time of operating any motorized vessel or manipulating water skis, an aquaplane, or a similar device, under the age of 21 years and under the influence of, or affected by, an alcoholic beverage regardless of whether a chemical test was made to determine that person's blood-alcohol concentration and if the trier of fact finds that the person had consumed an alcoholic beverage and was operating any motorized vessel or manipulating water skis, an aquaplane, or a similar device while having a concentration of 0.01 percent or more, by weight, of alcohol in his or her blood.

(c) Section 655.1 applies to violations of this section.

(d) A violation of this section is punishable by a fine not exceeding one hundred dollars ($100). A second violation occurring within one year of a prior violation which resulted in a conviction is punishable by a fine not exceeding two hundred dollars ($200). A third or any subsequent conviction within a period of one year of two or more prior infractions which resulted in convictions is punishable by a fine not exceeding two hundred fifty dollars ($250). A person found to have committed a violation of this section shall be required to participate in an alcohol education or community service program as provided in Section 23502 of the Vehicle Code.

SEC. 1.3. Section 11836 of the Health and Safety Code is amended to read:

11836. (a) The department shall have the sole authority to issue, deny, suspend, or revoke the license of a driving-under-the-influence program. As used in this chapter "program" means any firm, partnership, association, corporation, local governmental entity, agency or place that has been initially recommended by the county board of supervisors and that is subsequently licensed by the department to provide alcohol or drug recovery services to either a (1) person whose license to drive has been administratively suspended or revoked for, or who is convicted of, a violation of Section 23152 or 23153 of the Vehicle Code, and admitted to a program pursuant to Section 13352, 13353.4, 23538, 23542, 23548, 23552, 23556, 23562, or 23568 of the Vehicle Code, or (2) a person who is convicted of a violation of subdivision (b), (c), (d), or (e) of Section 655 of the Harbors and Navigation Code, or of Section 655.4 of that code, and admitted to the program pursuant to Section 668 of that code.

(b) If a firm, partnership, corporation, association, local government entity, agency, or place has, or is applying for, more than one license, the department shall treat each licensed program, or each program seeking licensure, as belonging to a separate firm, partnership, corporation, association, local government entity, agency, or place for the purposes of this chapter.

SEC. 1.5. Section 11837 of the Health and Safety Code is amended to read:

11837. (a) Pursuant to the provisions of law relating to suspension of a person's privilege to operate a motor vehicle upon conviction for driving while under the influence of any alcoholic beverage or drug, or under the combined influence of any alcoholic beverage and any drug, as set forth in paragraph (3) or (4) of subdivision (a) of Section 13352 of the Vehicle Code, the Department of Motor Vehicles shall restrict the driving privilege pursuant to Section 13352.5 of the Vehicle Code, if the court has notified the department pursuant to Section 13352.5 of the Vehicle Code that the person convicted of that offense has consented to participate for at least 18 months in a program designed to offer alcohol and other drug education and counseling services that is licensed pursuant to this chapter.

(b) In determining whether to refer a person, who is ordered to participate in a program pursuant to Section 668 of the Harbors and Navigation Code, in a licensed alcohol and other drug education and counseling services program pursuant to Section 23538 of the Vehicle Code, or, pursuant to Section 23542, 23548, 23552, 23556, 23562, or 23568 of the Vehicle Code, in a licensed 18-month or 30-month program, the court may consider any relevant information about the person made available pursuant to a presentence investigation, that is permitted but not required under Section 23655 of the Vehicle Code, or other screening procedure. That information shall not be furnished, however, by any person who also provides services in a privately operated, licensed program or who has any direct interest in a privately operated, licensed program. In addition, the court shall obtain from the Department of Motor Vehicles a copy of the person's driving record to determine whether the person is eligible to participate in a licensed 18-month or 30-month program pursuant to this chapter. When preparing a presentence report for the court, the probation department may consider the suitability of placing the defendant in a treatment program that includes the administration of nonscheduled nonaddicting medications to ameliorate an alcohol or controlled substance problem. If the probation department recommends that this type of program is a suitable option for the defendant, the defendant who would like the court to consider this option shall obtain from his or her physician a prescription for the medication, and a finding that the treatment is medically suitable for the defendant, prior to consideration of this alternative by the court.

(c) The court may, as a condition of probation pursuant to Section 23538 or 23556 of the Vehicle Code, refer a first offender to a licensed program to attend all of the education, group counseling, and interview sessions described in this chapter if ordered to participate in 6, 9, or 12 months of program activities. Notwithstanding Section 13352.5 of the Vehicle Code, if a first offender is referred to a licensed program pursuant to Section 23538 or 23556 of the Vehicle Code, that

person may participate in a program if convicted of another offense punishable under Section 23540 or 23560 of the Vehicle Code.

(d) The court may, subject to Section 11837.2, and as a condition of probation, refer a person to a licensed program, even though the person's privilege to operate a motor vehicle is restricted, suspended, or revoked. An 18-month program described in Section 23542 or 23562 of the Vehicle Code or a 30-month program described in Section 23548, 23552, or 23568 of the Vehicle Code may include treatment of family members and significant other persons related to the convicted person with the consent of those family members and others as described in this chapter, if there is no increase in the costs of the program to the convicted person.

SEC. 1.7. Section 11837.1 of the Health and Safety Code is amended to read:

11837.1. (a) In utilizing any program defined in subdivision (e) of Section 11837, the court may require periodic reports concerning the performance of each person referred to and participating in a program. The program shall provide the court, the Department of Motor Vehicles, and the person participating in a program, with an immediate report of any failure of the person to comply with the program's rules and policies.

(b) (1) If, at any time after entry into or while participating in a program, a participant who is referred to an 18-month program described in Section 23542 or 23562 of the Vehicle Code or a 30-month program described in Section 23548, 23552, or 23568 of the Vehicle Code, fails to comply with the rules and policies of the program, and that fact is reported, the Department of Motor Vehicles shall revoke or suspend the privilege of that person to operate a motor vehicle for the period prescribed by law in accordance with Section 13352.5 of the Vehicle Code, except as otherwise provided in this section. The Department of Motor Vehicles shall notify the person and the court of its intended action and shall inform the person of the opportunity to be reinstated in the program and to avoid suspension of the driving privilege.

(2) Notwithstanding paragraph (1), the Department of Motor Vehicles shall not suspend the driving privilege pursuant to paragraph (1) if the court, upon the petition of the person, determines that the person should be reinstated in the 18-month or 30-month program. The determination by the court shall be made within 45 days of the notice from the department of the intended action or the additional time, not to exceed an additional 45 days, for the determination as is required, ordered, and transmitted to the Department of Motor Vehicles by the court, which additional time is not caused by any action or failure to act by the person. Upon timely presentation by the person to the Department of Motor Vehicles of evidence satisfactory to the Department of Motor Vehicles that the court of jurisdiction has consented to the person's reinstatement in the program and that the person is currently participating in the

program, the Department of Motor Vehicles shall continue in effect the restriction of the driving privilege prescribed by Section 13352.5 of the Vehicle Code. However, if the person has previously been reinstated in the program on one or more prior occasions, the department shall suspend or revoke the driving privilege for the time prescribed in paragraph (3) or (4) of subdivision (a) of Section 13352 of the Vehicle Code. If the court fails to grant the person's petition for reinstatement in the program, the court shall suspend the person's driving privilege until the time the person's driving privilege is suspended or revoked by the Department of Motor Vehicles pursuant to subdivision (d) of Section 13352.5 of the Vehicle Code.

(c) If, at any time after referral to or while participating in a program, a participant who is referred to an alcohol or drug education and counseling program pursuant to Section 23538 or 23556 of the Vehicle Code, to an 18-month program pursuant to Section 23542 or 23562 of the Vehicle Code, or to a 30-month program pursuant to Section 23548, 23552, or 23568 of the Vehicle Code, refuses, for any reason, to consent to a chemical test that he or she is required to submit to pursuant to Section 23612 of the Vehicle Code, his or her participation in the program shall be terminated and, the Department of Motor Vehicles shall immediately suspend or revoke his or her privilege to operate a motor vehicle for the period prescribed in Section 13352 of the Vehicle Code, according to the offense for which he or she was convicted immediately prior to referral to the program. The period of suspension or revocation shall be in addition to the period of suspension imposed by the Department of Motor Vehicles pursuant to Section 13353 of the Vehicle Code.

(d) If the department withdraws the license of a program, the department shall immediately notify the Department of Motor Vehicles of those persons who do not commence participation in a licensed program within 21 days from the date of the withdrawal of the license of the program in which the persons were previously participating. The Department of Motor Vehicles shall suspend or revoke, for the period prescribed by law, the privilege to operate a motor vehicle of each of those persons referred to an 18-month program pursuant to Section 23542 or 23562 of the Vehicle Code or to a 30-month program pursuant to Section 23548, 23552, or 23568 of the Vehicle Code.

SEC. 1.9. Section 11837.2 of the Health and Safety Code is amended to read:

11837.2. (a) The court may refer persons only to licensed programs. Subject to these provisions, a person is eligible to participate in the program if it is operating in (1) the county where the person is convicted, or (2) the county where the person resides, or (3) a county that has an agreement with such person's county of

residence pursuant to Section 11838, or (4) a county to which a person may request transfer pursuant to subdivision (d).

If a person granted probation under Section 23542 or 23562 of the Vehicle Code cannot be referred to a licensed 18-month program pursuant to this section, Section 13352.5 of the Vehicle Code does not apply.

(b) If a person has consented to participate in a licensed program and the county where the person is convicted is the same county in which the person resides, the court may order the person to participate in a licensed program within that county, or, if that county does not have a licensed program, the court may order that person to participate in a licensed program within another county, pursuant to Section 11838.

(c) If a person has consented to participate in a licensed program in the county in which that person resides or in a county in which the person's county of residence has an agreement pursuant to Section 11837, and the county where the person is convicted is not the county where the person resides, and if the court grants the person summary probation, the court may order the person to participate in a licensed program in that county. In lieu of summary probation, the court may utilize the probation officer to implement the orders of the court. If the county in which the person resides does not have a licensed program or an agreement with another county pursuant to Section 11838 and the person consents, the court may order the person to participate in a licensed program within the county where that person is convicted or in a county with which the county has an agreement pursuant to Section 11838.

(d) Except as otherwise provided in subdivision (e), subsequent to a person's commencement of participation in a program, the person may request transfer to another licensed program (1) in the same county in which the person has commenced participation in the program, upon approval of that county's alcohol program administrator, or (2) in a county other than the county in which the person has commenced participation in the program, upon approval of the alcohol program administrator of the county in which the person is participating and the county to which the person is requesting transfer.

(e) Subdivision (d) does not apply (1) if the court has ordered the person to participate in a specific licensed program, unless the court orders the transfer or, (2) if the person is under formal probation, unless the probation officer consents to the transfer. The department shall establish reporting forms and procedures to ensure that the court receives notice of any program transfer pursuant to this subdivision or subdivision (d).

(f) Jurisdiction of all postconviction matters arising pursuant to this section may be retained by the court of conviction.

(g) The department, in cooperation with the Department of Motor Vehicles and the alcohol program administrators, shall

establish procedures to ensure the effective implementation of this section.

SEC. 1.11. Section 11837.4 of the Health and Safety Code is amended to read:

11837.4. (a) No program, regardless of how it is funded, may be licensed unless all of the requirements of this chapter and of the regulations adopted pursuant to this chapter have been met.

(b) Each licensed program shall include, but not be limited to, the following:

(1) For the alcohol or drug education and counseling services programs specified in subdivision (b) of Section 11837, each program shall provide for close and regular face-to-face interviews. For the 18-month programs specified in subdivision (a) of Section 11837, each program shall provide for close and regular supervision of the person, including face-to-face interviews at least once every other calendar week, regarding the person's progress in the program for the first 12 months of the program and shall provide only community reentry supervision during the final six months of the program. In the last six months of the 18-month program, the provider shall monitor the participant's community reentry activity with self-help groups, employment, family, and other areas of self-improvement. Unless otherwise ordered by the court, the provider's monitoring services is limited to not more than six hours. For the 30-month programs specified in subdivision (b) of Section 23548, subdivision (b) of Section 23552, and subdivision (b) of Section 23568 of the Vehicle Code, each program shall provide for close and regular supervision of the person, including regular, scheduled face-to-face interviews over the course of 30 months regarding the person's progress in the program and recovery from problem drinking, alcoholism, chemical dependency, or polydrug abuse, as prescribed by regulations of the department. The interviews in any of those programs shall be conducted individually with each person being supervised and shall occur at times other than when the person is participating in any group or other activities of the program. No program activity in which the person is participating shall be interrupted in order to conduct the individual interviews.

(2) The department shall approve all fee schedules for the programs and shall require that each program be self-supporting from the participants' fees and that each program provide for the payment of the costs of the program by participants at times and in amounts commensurate with their ability to pay in order to enable these persons to participate. Each program shall make provisions for persons who can successfully document current inability to pay the fees. Only the department may establish the criteria and procedures for determining a participant's ability to pay. The department shall ensure that the fees are set at amounts which will enable programs to provide adequately for the immediate and long-term continuation of services required pursuant to this chapter. The fees shall be used

only for the purposes set forth in this chapter, except that any profit or surplus, that does not exceed the maximum level established by the department, may be utilized for any purposes allowable under any other provisions of law. In its regulations, the department shall define, for the purposes of this paragraph, taking into account prudent accounting, management, and business practices and procedures, the terms "profits" and "surplus." The department shall fairly construe these provisions so as not to jeopardize fiscal integrity of the programs. The department may not license any program if the department finds that any element of the administration of the program does not assure the fiscal integrity of the program.

(3) The licensed programs described in paragraph (1) shall include a variety of treatment services for problem drinkers, alcoholics, chemical dependents, and polydrug abusers or shall have the capability of referring the persons to, and regularly and closely supervising the persons while in, any appropriate medical, hospital, or licensed residential treatment services or self-help groups for their problem drinking, alcoholism, chemical dependency, or polydrug abuse problem. In addition to the requirements of paragraph (1), the department shall prescribe in its regulations what other services the program shall provide, at a minimum, in the treatment of participants, which services may include lectures, classes, group discussions, group counseling, or individual counseling in addition to the interviews required by paragraph (1), or any combination thereof. However, any group discussion or counseling activity, other than classes or lectures, shall be regularly scheduled to consist of not more than 15 persons, except that they may, on an emergency basis, exceed 15, but not more than 17, persons, at any one meeting. At no time shall there be more than 17 persons in attendance at any one meeting. For the 30-month programs specified in subdivision (b) of Section 23548, subdivision (b) of Section 23552, and subdivision (b) of Section 23568 of the Vehicle Code, each licensed program shall include a method by which each participant shall maintain a compendium of probative evidence, as prescribed in the regulations of the department, on a trimonthly basis demonstrating a performance of voluntary community service by the participant, including, but not limited to, the prevention of drinking and driving, the promotion of safe driving, and responsible attitudes toward the use of chemicals of any kind, for not less than 120 hours and not more than 300 hours, as determined by the court, with one-half of that time to be served during the initial 18 months of program participation and one-half of that time to be served in the final 12 months. In determining whether or not the participant has met the objectives of the program, the compendium of evidence shall also include, and the court shall consider, the participant's demonstration of significant improvement in any of the following areas of personal achievement:

(A) Significant improvement in occupational performance, including efforts to obtain gainful employment.

(B) Significant improvement in physical and mental health.

(C) Significant improvement in family relations, including financial obligations.

(D) Significant improvement in financial affairs and economic stability.

The compendium of evidence shall be maintained by the participant for review by the program, court, probation officer, or other appropriate governmental agency. The program officials, unless prohibited by the referring court, shall make provisions for a participant to voluntarily enter, using the participant's own resources, a licensed chemical dependency recovery hospital or residential treatment program which has a valid license issued by the State of California to provide alcohol or drug services, and to receive three weeks of program participation credit for each week of that treatment, not to exceed 12 weeks of program participation credit, but only if the treatment is at least two weeks in duration. The program shall document probative evidence of this hospital or residential care treatment in the participant's program file.

(4) In order to assure program effectiveness, the department shall require, whenever appropriate, that the licensed program provides services to ethnic minorities, women, youth, or any other group that has particular needs relating to the program.

(5) The goal of each program shall be to assist persons participating in the program to recognize their chemical dependency and to assist them in their recovery.

(6) Each program shall establish a method by which the court, the Department of Motor Vehicles, and the person are notified in a timely manner of the person's failure to comply with the program's rules and regulations.

(c) No program may be licensed unless the county complies with the requirements of subdivision (b) of Section 11812. The provider of a program that offers an alcohol or drug education and counseling services program, an 18-month program, or a 30-month program or any or all of those programs described in this section shall be required to obtain only one license. The department's regulations shall specify the requirements for the establishment of each program. The license issued by the department shall identify the program or programs licensed to operate.

(d) Departmental approval for the establishment of a 30-month program by a licensed 18-month program is contingent upon approval by the county alcohol program administrator, based upon confirmation that the program applicant is capable of providing the service and that the fiscal integrity of the program applicant will not be jeopardized by the operation of the program.

The court shall refer a person to a 30-month treatment program only if a 30-month program exists or is provided for in the jurisdiction of the court.

(e) A county or program shall not prescribe additional program requirements unless the requirements are specifically approved by the department.

(f) The department may license a program on a provisional basis.

SEC. 1.13. Section 670 of the Insurance Code is amended to read:

670. (a) No admitted insurer licensed to issue motor vehicle liability policies, as defined in Section 16450 of the Vehicle Code, shall cancel, or refuse to renew, a motor vehicle liability insurance policy covering drivers hired to drive by a commercial business establishment nor execute the agreement specified in paragraph (1) of subdivision (d) of Section 11580.1 with respect to those drivers for the reason that those drivers have been convicted of violations of the Vehicle Code or the traffic laws of any subdivision of the state which were committed while operating private passenger vehicles not owned or leased by their employer.

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

(1) Homicide or assault arising out of the operation of a private passenger motor vehicle.

(2) A violation while operating a private passenger motor vehicle of any of the following sections or section subdivisions of the Vehicle Code:

(A) Subdivision (a) of Section 14601.

(B) Subdivision (a) of Section 14601.1.

(C) Subdivision (a) of Section 14601.2.

(D) Section 20001 or 20002.

(E) Subdivision (a) of Section 20008.

(F) Section 23104.

(G) Subdivision (c) of Section 23152.

(H) Section 23153.

(3) A violation, while operating a private passenger motor vehicle, of subdivision (a) or (b) of Section 23152 of the Vehicle Code punishable under Section 23540 or 23546 of the Vehicle Code.

SEC. 1.15. Section 1861.025 of the Insurance Code is amended to read:

1861.025. A person is qualified to purchase a Good Driver Discount policy if he or she meets all of the following criteria:

(a) He or she has been licensed to drive a motor vehicle for the previous three years.

(b) During the previous three years, he or she has not done any of the following:

(1) Had more than one violation point count determined as provided by subdivision (a), (b), (c), (d), (e), (g), or (h) of Section 12810 of the Vehicle Code, but subject to the following modifications:

For the purposes of this section, the driver of a motor vehicle involved in an accident for which he or she was principally at fault which resulted only in damage to property shall receive one violation

point count, in addition to any other violation points which may be imposed for this accident.

If under Section 488 or 488.5 an insurer is prohibited from increasing the premium on a policy on account of a violation, that violation shall not be included in determining the point count of the person.

If a violation is required to be reported under Section 1816 of the Vehicle Code, or under Section 784 of the Welfare and Institutions Code, or any other provision requiring the reporting of a violation by a minor, the violation shall be included for the purposes of this section in determining the point count in the same manner as is applicable to adult violations.

(2) Had more than one dismissal pursuant to Section 1803.5 of the Vehicle Code which was not made confidential pursuant to Section 1808.7 of the Vehicle Code, in the 36-month period for violations that would have resulted in the imposition of more than one violation point count under paragraph (1) if the complaint had not been dismissed.

(3) Was the driver of a motor vehicle involved in an accident which resulted in bodily injury or in the death of any person and was principally at fault. The commissioner shall adopt regulations setting guidelines to be used by insurers for the their determination of fault for the purposes of this paragraph and paragraph (1) of subdivision (b).

(c) During the previous seven years he or she has not been convicted of a violation of Section 23140, 23152, or 23153, of the Vehicle Code, a felony violation of Section 23550 or 23566 of the Vehicle Code, or a violation of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code.

(d) Any person who claims that he or she meets the criteria of subdivisions (a), (b), and (c) based entirely or partially on a driver's license and driving experience acquired anywhere other than in the United States or Canada is rebuttably presumed to be qualified to purchase a good driver discount policy if he or she has been licensed to drive in the United States or Canada for at least the previous 18 months and meets the criteria of subdivisions (a), (b), and (c) for that period.

SEC. 1.17. Section 191.5 of the Penal Code is amended to read:

191.5. (a) Gross vehicular manslaughter while intoxicated is the unlawful killing of a human being without malice aforethought, in the driving of a vehicle, where the driving was in violation of Section 23140, 23152, or 23153 of the Vehicle Code, and the killing was either the proximate result of the commission of an unlawful act, not amounting to a felony, and with gross negligence, or the proximate result of the commission of a lawful act which might produce death, in an unlawful manner, and with gross negligence.

(b) Gross vehicular manslaughter while intoxicated also includes operating a vessel in violation of subdivision (b), (c), (d), (e), or (f)

of Section 655 of the Harbors and Navigation Code, and in the commission of an unlawful act, not amounting to felony, and with gross negligence; or operating a vessel in violation of subdivision (b), (c), (d), (e), or (f) of Section 655 of the Harbors and Navigation Code, and in the commission of a lawful act which might produce death, in an unlawful manner, and with gross negligence.

(c) Gross vehicular manslaughter while intoxicated is punishable by imprisonment in the state prison for 4, 6, or 10 years.

(d) Any person convicted of violating this section who has one or more prior convictions of this section or of paragraph (1) or (3) of subdivision (c) of Section 192, subdivision (a) or (c) of Section 192.5 of this code, or of violating Section 23152 punishable under Sections 23540, 23542, 23546, 23548, 23550, or 23552 of, or convicted of Section 23153 of, the Vehicle Code, shall be punished by imprisonment in the state prison for a term of 15 years to life. Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce the term imposed pursuant to this subdivision.

(e) This section shall not be construed as prohibiting or precluding a charge of murder under Section 188 upon facts exhibiting wantonness and a conscious disregard for life to support a finding of implied malice, or upon facts showing malice consistent with the holding of the California Supreme Court in People v. Watson, 30 Cal. 3d 290.

(f) This section shall not be construed as making any homicide in the driving of a vehicle or the operation of a vessel punishable which is not a proximate result of the commission of an unlawful act, not amounting to felony, or of the commission of a lawful act which might produce death, in an unlawful manner.

SEC. 1.19. Section 193.7 of the Penal Code is amended to read:

193.7. Any person convicted of a violation of paragraph (3) of subdivision (c) of Section 192 which occurred within seven years of two or more separate violations of Section 23103, as specified in Section 23103.5, of, or Section 23152 or 23153 of, the Vehicle Code, or any combination thereof, which resulted in convictions, shall be designated as an habitual traffic offender subject to paragraph (3) of subdivision (e) of Section 14601.3 of the Vehicle Code, for a period of three years, subsequent to the conviction. The person shall be advised of this designation pursuant to Section 23522 or 23590 of the Vehicle Code.

SEC. 1.21. Section 647.2 of the Penal Code is amended to read:

647.2. If a person is convicted of a violation of subdivision (f) of Section 647 and is granted probation, the court may order, with the consent of the defendant, as a term and condition of probation, in addition to any other term and condition required or authorized by law, that the defendant participate in the program prescribed in Section 23509 of the Vehicle Code.

SEC. 1.23. Section 1203.1bb of the Penal Code is amended to read:

1203.1bb. (a) The reasonable cost of probation determined under subdivision (a) of Section 1203.1b shall include the cost of purchasing and installing an ignition interlock device pursuant to Section 13386 of the Vehicle Code. Any defendant subject to this section shall pay the manufacturer of the ignition interlock device directly for the cost of its purchase and installation, in accordance with the payment schedule ordered by the court. If practicable, the court shall order payment to be made to the manufacturer of the ignition interlock device within a six-month period.

This subdivision does not require any county to pay the costs of purchasing and installing any ignition interlock devices ordered pursuant to Section 13386 of the Vehicle Code. The Office of Traffic Safety shall consult with the presiding judge or his or her designee in each county to determine an appropriate means, if any, to provide for installation of ignition interlock devices in cases in which the defendant has no ability to pay.

SEC. 1.25. Section 1803 of the Vehicle Code is amended to read:

1803. (a) Every clerk of a court in which a person was convicted of any violation of this code, was convicted of any violation of subdivision (a), (b), (c), (d), (e), or (f) of Section 655 pertaining to a mechanically propelled vessel but not to manipulating any water skis, an aquaplane, or similar device, was convicted of any violation of Section 655.2, 655.6, 658, or 658.5 of the Harbors and Navigation Code, or any violation of Section 191.5 of the Penal Code when the conviction resulted from the operation of a vessel, was convicted of any offense involving use or possession of controlled substances under Division 10 (commencing with Section 11000) of the Health and Safety Code, was convicted of any felony offense when a commercial motor vehicle, as defined in subdivision (b) of Section 15210, was involved in or incidental to the commission of the offense, or was convicted of any violation of any other statute relating to the safe operation of vehicles, shall prepare within 10 days after conviction and immediately forward to the department at its office at Sacramento an abstract of the record of the court covering the case in which the person was so convicted. If sentencing is not pronounced in conjunction with the conviction, the abstract shall be forwarded to the department within 10 days after sentencing and the abstract shall be certified by the person so required to prepare it to be true and correct.

For the purposes of this section, a forfeiture of bail shall be equivalent to a conviction.

(b) The following violations are not required to be reported under subdivision (a):

(1) Division 3.5 (commencing with Section 9840).

(2) Section 21113, with respect to parking violations.

(3) Chapter 9 (commencing with Section 22500) of Division 11, except Section 22526.

(4) Division 12 (commencing with Section 24000), except Sections 24002, 24004, 24250, 24409, 24604, 24800, 25103, 26707, 27151, 27315, 27360, 27800, and 27801 and Chapter 3 (commencing with Section 26301).

(5) Division 15 (commencing with Section 35000), except Chapter 5 (commencing with Section 35550).

(6) Violations for which a person was cited as a pedestrian or while operating a bicycle.

(7) Division 16.5 (commencing with Section 38000).

(8) Sections 23221, 23223, 23225, and 23226.

(c) If the court impounds a license or orders a person to limit his or her driving pursuant to paragraph (2) of subdivision (a) of Section 23538, subdivision (b) of Section 23542, subdivision (b) of Section 23562, or subdivision (c) of Section 40508, the court shall notify the department concerning the impoundment or limitation on an abstract prepared pursuant to subdivision (a) of this section or on a separate abstract, which shall be prepared within 10 days after the impoundment or limitation was ordered and immediately forwarded to the department at its office in Sacramento.

(d) If the court determines that a prior judgment of conviction of a violation of Section 23152 or 23153 is valid or is invalid on constitutional grounds pursuant to Section 41403, the clerk of the court in which the determination is made shall prepare an abstract of that determination and forward it to the department in the same manner as an abstract of record pursuant to subdivision (a).

(e) Within 10 days of an order terminating or revoking probation under Section 23544, 23564, or 23602, the clerk of the court in which the order terminating or revoking probation was entered, shall prepare and immediately forward to the department at its office in Sacramento an abstract of the record of the court order terminating or revoking probation and any other order of the court to the department required by law.

SEC. 1.27. Section 12802.5 of the Vehicle Code is amended 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 13388 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. 1.29. Section 13106 of the Vehicle Code, as added by Section 5 of Chapter 1133 of the Statutes of 1994 is repealed.

SEC. 1.31. Section 13106 of the Vehicle Code, as added by Section 8 of Chapter 1221 of the Statutes of 1994, is amended to read:

13106. (a) When the privilege of a person to operate a motor vehicle is suspended or revoked, the department shall notify the person by certified mail, return receipt requested, of the action taken and of the effective date thereof, except for those persons personally given notice by the department or a court, by a peace officer pursuant to Section 13388 or 13382, or otherwise pursuant to this code. It shall be conclusively presumed that a person has knowledge of the suspension or revocation if notice has been sent by certified mail by the department pursuant to this section to the most recent address reported by the person to the department pursuant to Section 14600, and the return receipt has been signed and returned to the department. It is the responsibility of every licenseholder to report changes of address to the department pursuant to Section 14600.

(b) (1) In the event the certified mail is not delivered, the department shall attempt to provide personal service by using a process server for service of any person whose driving privilege was suspended or revoked for a conviction of a violation of Section 23103, 23104, 23152, or 23153, or for any reason listed in subdivision (a) or (c) of Section 12806, or for negligent or incompetent operation of a vehicle pursuant to subdivision (e) of Section 12809 or Section 12810.

(2) The only purpose of this subdivision is to provide an additional deterrent to unlawful driving.

(c) At the time of license reinstatement, the department shall recover, through fees authorized pursuant to Section 14906, an amount equal to its total costs of providing notices pursuant to this section.

SEC. 1.33. Section 13202.8 of the Vehicle Code is amended to read:

13202.8. The restrictions specified in Section 13202.5 for the violations specified in that section may include, but are not limited to, the installation and maintenance of a certified ignition interlock device pursuant to Section 13386. Any restriction is subject to the provisions of Section 13202.5 relating to restrictions.

SEC. 1.35. Section 13350 of the Vehicle Code is amended to read:

13350. (a) The department immediately shall revoke the privilege of any person to drive a motor vehicle upon receipt of a duly

certified abstract of the record of any court showing that the person has been convicted of any of the following crimes or offenses:

(1) Failure of the driver of a vehicle involved in an accident resulting in injury or death to any person to stop or otherwise comply with Section 20001.

(2) Any felony in the commission of which a motor vehicle is used, except as provided in Section 13351, 13352, or 13357.

(3) Reckless driving causing bodily injury.

(b) If a person is convicted of a violation of Section 23152 punishable under Section 23546, 23550, or 23175.5, or a violation of Section 23153 punishable under Section 23566, including a violation of paragraph (3) of subdivision (c) of Section 192 of the Penal Code as provided in Section 193.7 of that code, the court shall, at the time of surrender of the driver's license or temporary permit, require the defendant to sign an affidavit in a form provided by the department acknowledging his or her understanding of the revocation required by paragraph (5), (6), or (7) of subdivision (a) of Section 13352, and an acknowledgment of his or her designation as an habitual traffic offender. A copy of this affidavit shall be transmitted, with the license or temporary permit, to the department within the prescribed 10 days.

(c) The department shall not reinstate the privilege revoked under subdivision (a) until the expiration of one year after the date of revocation and until the person whose privilege was revoked gives proof of financial responsibility as defined in Section 16430.

SEC. 1.37. Section 13350.5 of the Vehicle Code is amended to read:

13350.5. Notwithstanding Section 23522 or 23590, for the purposes of this article, conviction of a violation of paragraph (3) of subdivision (c) of Section 192 of the Penal Code is a conviction of a violation of Section 23153.

SEC. 2. Section 13352.2 of the Vehicle Code is repealed.

SEC. 3. Section 13352 of the Vehicle Code is amended to read:

13352. (a) The department shall immediately suspend or revoke, or record the court-administered suspension or revocation of, the privilege of any person to operate a motor vehicle upon receipt of a duly certified abstract of the record of any court showing that the person has been convicted of a violation of Section 23152 or 23153 or subdivision (a) of Section 23109, or upon receipt of a report of a judge of the juvenile court, a juvenile traffic hearing officer, or a referee of a juvenile court showing that the person has been found to have committed a violation of Section 23152 or 23153 or subdivision (a) of Section 23109. If any offense in this section occurs in a vehicle defined in Section 15210, the suspension or revocation specified below shall apply to the noncommercial driving privilege. The commercial driving privilege shall be disqualified as specified in Section 15300. For purposes of this section, suspension or revocation shall be as follows:

(1) Upon a conviction or finding of a violation of Section 23152 punishable under Section 23356, the privilege shall be suspended for a period of six months if the court orders the department to suspend the privilege, or if the court does not grant probation. If the person gives proof of ability to respond in damages as defined in Section 16430, the department shall issue the restricted license upon receipt of an abstract of record from the court pursuant to Section 1803 certifying that the court has granted probation to the person on conditions which include the condition specified in subdivision (b) of Section 23538. The privilege shall not be reinstated until the person gives proof of ability to respond in damages and gives proof satisfactory to the department of successful completion of a program described in Section 23538.

(2) Upon a conviction or finding of a violation of Section 23153 punishable under Section 23554, the privilege shall be suspended for a period of one year. The privilege shall not be reinstated until the person gives proof of ability to respond in damages and gives proof satisfactory to the department of successful completion of a program described in Section 23538.

(3) Except as provided in Section 13352.5, upon a conviction or finding of a violation of Section 23152 punishable under Section 23540, the privilege shall be suspended for 18 months. The privilege shall not be reinstated until the person gives proof of ability to respond in damages and gives proof satisfactory to the department of successful completion of a program described in Section 23542.

(4) Except as provided in Section 13352.5, upon a conviction or finding of a violation of Section 23153 punishable under Section 23560, the privilege shall be revoked for a period of three years. The privilege shall not be reinstated until evidence satisfactory to the department establishes that no grounds exist that would authorize the refusal to issue a license and until the person gives proof of ability to respond in damages, and until the person gives proof satisfactory to the department of successful completion of a program described in Section 23542.

(5) Upon a conviction or finding of a violation of Section 23152 punishable under Section 23546, the privilege shall be revoked for a period of three years. The privilege shall not be reinstated until the person files proof of ability to respond in damages and gives proof satisfactory to the department of successful completion, subsequent to the most recent underlying conviction, of one of the following programs: an 18-month program or, if available in the county of the person's residence or employment, a 30-month program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, or a program specified in Section 8001 of the Penal Code. The court shall advise the person at the time of sentencing that completion of one of the programs authorized by this paragraph is required in order to become eligible for a California driver's license. The court shall also advise the person

that after the completion of 24 months of the revocation period, the person may apply to the court for an order granting a restricted driver's license, subject to the following conditions:

(A) The person has satisfactorily completed, subject to the current underlying conviction, either of the following:

(i) A licensed 18-month program pursuant to Section 11836 of the Health and Safety Code.

(ii) The initial 18 months of a licensed 30-month program, if available in the county of the person's residence or employment, pursuant to Section 11836 of the Health and Safety Code.

(B) The person agrees, as a condition of the restriction, to continue satisfactory participation in the 30-month program, if applicable, and to have installed and maintained, as described in Section 23575, an ignition interlock device. The court shall require proof of installation of the device before issuing an order granting a restricted license. Once the order granting a restricted license is issued, all maintenance requirements in Section 23575 apply and the driver becomes subject to the prohibitions and penalties provided in Section 23247.

(C) The person provides proof of responsibility to respond in damages.

(D) The person has not applied for and received an order in conjunction with the current underlying conviction or a prior conviction for violation of Section 23103, 23152, or 23153, if the prior conviction was within the previous seven years.

(E) Any individual convicted of a violation of Section 23152 punishable under Section 23546 may also, at any time after sentencing, petition the court for referral to an 18-month program or, if available in the county of the person's residence or employment, a 30-month program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code. Unless good cause is shown, the court shall order the referral.

(6) Upon a conviction or finding of a violation of Section 23153 punishable under Section 23566, the privilege shall be revoked for a period of five years. The privilege shall not be reinstated until evidence satisfactory to the department establishes that no grounds exist that would authorize the refusal to issue a license and until the person gives proof of ability to respond in damages and gives proof satisfactory to the department of successful completion, subsequent to the most recent underlying conviction, of one of the following programs: a 30-month program, if available in the county of the person's residence or employment or, if not available, an 18-month program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, or a program specified in Section 8001 of the Penal Code. The court shall advise the person at the time of sentencing that completion of one of the programs authorized by this paragraph is required in order to become eligible for a California driver's license. The court shall also

advise the person that after the completion of 24 months of the revocation period, the person may apply to the court for an order granting a restricted driver's license, subject to the following conditions:

(A) (i) The person has satisfactorily completed, subject to the current underlying conviction, the 18-month program or the initial 18 months of a licensed 30-month program, as applicable, pursuant to Section 11836 of the Health and Safety Code.

(ii) The person agrees, as a condition of the restriction, to continue satisfactory participation in the 30-month program, if applicable, and to have installed and maintained, as described in Section 23575, an ignition interlock device. The court shall require proof of installation of the device before issuing an order granting a restricted license. Once the order granting a restricted license is issued, all maintenance requirements in Section 23575 apply and the driver becomes subject to the prohibitions and penalties provided in Section 23247.

(iii) The person provides proof of responsibility to respond in damages.

(iv) The person has not applied for and received an order in conjunction with the current underlying conviction or a prior conviction for a violation of Section 23103, 23152, or 23153, if the prior conviction was within the previous seven years.

(B) Any individual convicted of a violation of Section 23153 punishable under Section 23566 may also, at any time after sentencing, petition the court for referral to an 18-month program or, if available in the county of the person's residence or employment, a 30-month program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code. Unless good cause is shown, the court shall order the referral.

(7) Upon a conviction or finding of a violation of Section 23152 punishable under Section 23550 or 23175.5, the privilege shall be revoked for a period of four years. The privilege shall not be reinstated until evidence satisfactory to the department establishes that no grounds exist that would authorize the refusal to issue a license and until the person gives proof of ability to respond in damages and gives proof satisfactory to the department of successful completion, subsequent to the most recent underlying conviction, of one of the following programs: an 18-month program or, if available in the county of the person's residence or employment, a 30-month program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, or a program specified in Section 8001 of the Penal Code. The court shall advise the person at the time of sentencing that completion of one of the programs authorized by this paragraph is required in order to become eligible for a California driver's license. The court shall also advise the person that after the completion of 24 months of the revocation period, the person may apply to the court for an order

granting a restricted driver's license, subject to the following conditions:

(A) The person has satisfactorily completed, subject to the current underlying conviction, the initial 18 months of a licensed 30-month program pursuant to Section 11836 of the Health and Safety Code.

(B) The person agrees, as a condition of the restriction, to continue satisfactory participation in the 30-month program, if applicable, and to have installed and maintained, as described in Section 23575, an ignition interlock device. The court shall require proof of installation of the device before issuing an order granting a restricted license. Once the order granting a restricted license is issued, all maintenance requirements in Section 23575 apply and the driver becomes subject to the prohibitions and penalties provided in Section 23247.

(C) The person provides proof of responsibility to respond in damages.

(D) The person has not applied for and received an order in conjunction with the current underlying conviction or a prior conviction for violation of Section 23103, 23152, or 23153, if the prior conviction was within the previous seven years.

(E) Any individual convicted of a violation of Section 23152 punishable under Section 23550 may also, at any time after sentencing, petition the court for referral to an 18-month program or, if available in the county of the person's residence or employment, a 30-month program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code. Unless good cause is shown, the court shall order the referral.

(8) Upon a conviction or finding of a violation of subdivision (a) of Section 23109 punishable under subdivision (e) of that section, the privilege shall be suspended for a period of 90 days to six months, if and as ordered by the court.

(9) Upon a conviction or finding of a violation of subdivision (a) of Section 23109 punishable under subdivision (f) of that section, the privilege shall be suspended for a period of six months, if the court orders the department to suspend the privilege. The privilege shall not be reinstated until the person gives proof of ability to respond in damages.

(b) For the purpose of paragraphs (2) to (9), inclusive, of subdivision (a), the finding of the juvenile court judge, the juvenile traffic hearing officer, or the referee of a juvenile court of a commission of a violation of Section 23152 or 23153 or subdivision (a) of Section 23109, as specified in subdivision (a) of this section, is a conviction.

(c) Each judge of a juvenile court, juvenile traffic hearing officer, or referee of a juvenile court shall immediately report the findings specified in subdivision (a) to the department.

(d) A conviction of an offense in any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of

Puerto Rico, or Canada which, if committed in this state, would be a violation of Section 23152, is a conviction of Section 23152 for purposes of this section, and a conviction of an offense which, if committed in this state, would be a violation of Section 23153, is a conviction of Section 23153 for purposes of this section. The department shall suspend or revoke the privilege to operate a motor vehicle pursuant to this section upon receiving notice of that conviction.

(e) Whenever the driving privilege is restricted, suspended, or revoked pursuant to this section, the department shall not issue a restricted driver's license or reinstate the driving privilege unless the person gives proof of ability to respond in damages and maintains that proof for three years. If, at any time during that three-year period, a person who is required to maintain that proof fails to maintain that proof, the department shall suspend that person's driving privilege until the proof of ability to respond in damages is again given to the department.

SEC. 3.2. Section 13352.3 of the Vehicle Code is amended to read:

13352.3. (a) Notwithstanding any other provision of law, except subdivisions (b), (c), and (d) of Section 13352 and Sections 13367 and 23521, the department immediately shall revoke the privilege of any person to operate a motor vehicle upon receipt of a duly certified abstract of the record of any court showing that the person was convicted of a violation of Section 23152 or 23153 while under 18 years of age, or upon receipt of a report of a judge of the juvenile court, a juvenile traffic hearing officer, or a referee of a juvenile court showing that the person has been found to have committed a violation of Section 23152 or 23153.

(b) The term of the revocation shall be until the person reaches 18 years of age, for one year, or for the period prescribed for restriction, suspension, or revocation specified in subdivision (a) of Section 13352, whichever is longer. The privilege shall not be reinstated until the person gives proof of financial responsibility as defined in Section 16430.

SEC. 3.4. Section 13352.4 of the Vehicle Code is amended to read:

13352.4. (a) (1) The department shall require a person upon whom the court has imposed the condition of probation required by subdivision (b) of Section 23538 to submit proof of the satisfactory completion of a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code or of a program defined in Section 8001 of the Penal Code, within a time period set by the department, beginning from the date of a conviction or a finding by a court of a violation of Section 23152.

(2) The department shall require a person upon whom the court has imposed the condition of probation required by subdivision (b) of Section 23538 to submit proof of the satisfactory completion of the Navy Alcohol Drug Safety Action Program, within a time period set

by the department, beginning from the date of a conviction by a court or a finding by a court of a violation of Section 23152.

(b) The department shall suspend the privilege to drive of any person who is not in compliance with subdivision (a).

(c) The department shall not restore the privilege to operate a motor vehicle after a suspension pursuant to subdivision (b) until the department receives proof of the completion of a program pursuant to subdivision (a) that the department finds satisfactory.

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

SEC. 3.6. Section 13352.5 of the Vehicle Code is amended to read:

13352.5. (a) Unless ordered to do so by the court upon a finding that the terms and conditions of probation were violated, the department shall not suspend, pursuant to paragraph (3) of subdivision (a) of Section 13352, but shall restrict, the privilege of any person to operate a motor vehicle upon a conviction or finding that the person violated Section 23152. This requirement shall apply only if the court has certified to the department that the court has granted probation to the person under conditions that include those specified in subdivision (b) of Section 23542, the court has restricted the privilege to operate a motor vehicle as provided in that subdivision, and the person gives proof of financial responsibility, as defined in Section 16430.

(b) Unless ordered to do so by the court upon a finding that the terms and conditions of probation were violated, the department shall not revoke, pursuant to paragraph (4) of subdivision (a) of Section 13352, but shall suspend for one year and, thereafter, restrict for two additional years, the privilege of any person to operate a motor vehicle upon a conviction or finding that the person violated Section 23153. This requirement shall apply only if the court has certified to the department that the court has granted probation to the person under conditions that include those specified in subdivision (b) of Section 23562, the court has ordered the department to suspend the privilege to operate a motor vehicle as provided in that subdivision, and the person gives proof of financial responsibility.

(c) Subdivisions (a) and (b) do not apply to a person who has been referred or rereferred into a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code within four years after the person ceases his or her prior participation in a program. The four-year period shall commence either on the date the person successfully completes the program or on the date on which the person's driving privilege was suspended or revoked by the department for failure to comply with the program's rules and regulations, whichever is later. The eligibility of a person convicted of a violation of Section 23152 or 23153 subsequent to the commencement of a four-year period, to participate in the program again for purposes of this section, shall be

determined on the basis of the date on which the person is alleged to have committed that offense.

(d) The restriction of the driving privilege under subdivision (a) shall become effective 30 days from the date on which the person consented to participate in the program specified in subdivision (a), excluding any time of imprisonment ordered by the court. This requirement applies only if the person presents evidence satisfactory to the department that he or she is participating in the program specified in subdivision (b) of Section 23542, gives proof of financial responsibility, and pays fees to the department of fifteen dollars ($15) upon application for the restricted license and twenty dollars ($20) upon completion of the treatment program or upon application for an unrestricted license, whichever is sooner. If the person fails to apply for a restricted license, fails to give proof of financial responsibility, or if the person fails to show evidence of participation within 30 days, excluding the time of imprisonment ordered by the court, the department shall suspend the driving privilege of the person for the time prescribed in paragraph (3) of subdivision (a) of Section 13352.

(e) The restriction of the driving privilege under subdivision (b) shall become effective 30 days from the end of the period of suspension if the person presents evidence satisfactory to the department that he or she is participating in the program specified in subdivision (b) of Section 23562, gives proof of financial responsibility, and pays fees to the department of fifteen dollars ($15) upon application for the restricted license and twenty dollars ($20) upon completion of the treatment program or upon application for an unrestricted license, whichever is sooner. If the person fails to apply for a restricted license, fails to give proof of financial responsibility, or if the person fails to show evidence of participation within 30 days from the end of the period of suspension, excluding any time of imprisonment ordered by the court to be served after the end of the period of suspension, the department shall revoke the driving privilege of the person for the time prescribed in paragraph (4) of subdivision (a) of Section 13352.

(f) The driving privilege restricted under subdivision (a) or (b) shall be limited to the hours for driving to and from the place of employment and during the course of employment, and driving to and from activities required in an alcohol treatment program specified in subdivision (b) of Section 23542 or subdivision (b) of Section 23562. The department may set forth the times and days of restricted operation established by the court either on a special restricted license or upon the usual license form. Whenever the driving privilege is restricted under subdivision (a) or (b), proof of financial responsibility shall be maintained for three years. If the person maintains proof of financial responsibility, the restriction shall continue in full force and effect until the person presents evidence satisfactory to the department that the person has completed the

alcohol treatment program. The length of the restriction for a person subject to subdivision (a) shall not be less than the total time of restriction specified in subdivision (b) of Section 23542. The total time of suspension and restriction for a person subject to subdivision (b) shall not be less than the applicable period of revocation under paragraph (4) of subdivision (a) of Section 13352.

(g) Except as provided in this subdivision, the department shall suspend or revoke the driving privilege for the time prescribed in paragraph (3) or (4) of subdivision (a) of Section 13352, 60 days from the date that the department notifies the person and the court of the intended action pursuant to subdivision (a) of Section 11837.1 of the Health and Safety Code, or from the date ending the additional time ordered by the court under this subdivision, whichever is later. If the person presents evidence satisfactory to the department that the court of jurisdiction has consented to the person's reinstatement in the program and the person gives proof of financial responsibility, the department shall continue in effect the restriction granted under subdivision (c). However, if the person previously has been reinstated in the program on one or more occasions, the department shall suspend or revoke the driving privilege for the time prescribed in paragraph (3) or (4) of subdivision (a) of Section 13352. The evidence shall be presented within 45 days of the notice from the department of the intended action or the additional time, not to exceed an additional 45 days, for the determination, as is required, ordered, and transmitted to the department by the court, which additional time is not caused by any action or failure to act by the person.

(h) All abstracts of record showing a conviction that are forwarded to the department pursuant to Section 1803 shall state whether the court has granted probation to the person under conditions that include those specified in subdivision (b) of Section 23542 or subdivision (b) of Section 23562, and that state the date on which the person consented to participate in the program.

(i) The department, in cooperation with the State Department of Alcohol and Drug Programs, shall adopt regulations as it deems necessary to implement this section.

(j) This section does not apply to persons whose offense occurred in a vehicle requiring a driver with a class 1, class 2, class A, or class B driver's license, or with an endorsement specified in Section 15278.

SEC. 3.8. Section 13353 of the Vehicle Code is amended to read:

13353. (a) If any person refuses the officer's request to submit to, or fails to complete, a chemical test or tests pursuant to Section 23612, upon receipt of the officer's sworn statement that the officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23140, 23152, or 23153, and that the person had refused to submit to, or did not complete, the test or tests after being requested by the officer, the department shall do one of the following:

(1) Suspend the person's privilege to operate a motor vehicle for a period of one year.

(2) Revoke the person's privilege to operate a motor vehicle for a period of two years if the refusal occurred within seven years of either (A) a separate violation of Section 23103 as specified in Section 23103.5, or of Section 23140, 23152, or 23153, or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, that resulted in a conviction, or (B) a suspension or revocation of the person's privilege to operate a motor vehicle pursuant to this section or Section 13353.2 for an offense which occurred on a separate occasion.

(3) Revoke the person's privilege to operate a motor vehicle for a period of three years if the refusal occurred within seven years of any of the following:

(A) Two or more separate violations of Section 23103 as specified in Section 23103.5, or of Section 23140, 23152, or 23153, or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, or any combination thereof, which resulted in convictions.

(B) Two or more suspensions or revocations of the person's privilege to operate a motor vehicle pursuant to this section or Section 13353.2 for offenses which occurred on separate occasions.

(C) Any combination of two or more of those convictions or administrative suspensions or revocations.

The officer's sworn statement shall be submitted pursuant to Section 13380 on a form furnished or approved by the department. The suspension or revocation shall not become effective until 30 days after the giving of written notice thereof, or until the end of any stay of the suspension or revocation, as provided for in Section 13558.

(b) The notice of the order of suspension or revocation under this section shall be served on the person by a peace officer pursuant to Section 23612. 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 23612, 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 23140, 23152, or 23153.

(2) Whether the person was placed under arrest.

(3) Whether the person refused to submit to, or did not complete, the test or tests after being requested by a peace officer.

(4) Whether, except for the persons described in subdivision (a) of Section 23612 who are incapable of refusing, the person had been told that his or her driving privilege would be suspended or revoked if he or she refused to submit to, or did not complete, the test or tests.

(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. 3.10. Section 13353.1 of the Vehicle Code is amended 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 13388, upon receipt of the officer's sworn statement, submitted pursuant to Section 13380, 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 shall do one of the following:

(1) Suspend the person's privilege to operate a motor vehicle for a period of one year.

(2) Revoke the person's privilege to operate a motor vehicle for a period of two years if the refusal occurred within seven years of either of the following:

(A) A separate violation of subdivision (a) of Section 23136, which resulted in a finding of a violation, or a separate violation, which resulted in a conviction, of Section 23103, as specified in Section 23103.5, of Section 23140, 23152, or 23153, of Section 191.5 of the Penal Code, or of paragraph (3) of subdivision (c) of Section 192 of that code.

(B) A suspension or revocation of the person's privilege to operate a motor vehicle if that action was taken pursuant to this section or Section 13353 or 13353.2 for an offense that occurred on a separate occasion.

(3) Revoke the person's privilege to operate a motor vehicle for a period of three years if the refusal occurred within seven years of any of the following:

(A) Two or more separate violations of subdivision (a) of Section 23136, which resulted in findings of violations, or two or more separate violations, which resulted in convictions, of Section 23103, as specified in Section 23103.5, of Section 23140, 23152, or 23153, of Section 191.5 of the Penal Code, or of paragraph (3) of subdivision (c) of Section 192 of that code, or any combination thereof.

(B) Two or more suspensions or revocations of the person's privilege to operate a motor vehicle if those actions were taken pursuant to this section, or Section 13353 or 13353.2, for offenses that occurred on separate occasions.

(C) Any combination of two or more of the convictions or administrative suspensions or revocations described in subparagraphs (A) or (B).

(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 13388 and shall not become effective until 30 days after the person is served with that notice. 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 13388, 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 to do so 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. 3.12. 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 for any one of the following reasons:

(1) The person was driving a motor vehicle when the person had 0.08 percent or more, by weight, of alcohol in his or her blood.

(2) The person was under 21 years of age and had 0.05 percent or more, by weight, of alcohol in his or her blood.

(3) 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, or other chemical 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 13388 or 13382. 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 13388 or 13382, upon the receipt of the report of a peace officer submitted pursuant to Section 13380, 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 13380. 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 13388 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 13382 or otherwise. Notwithstanding subdivision (b) of Section 13558, if criminal charges under Section 23140, 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. 3.14. Section 13353.3 of the Vehicle Code 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 13388 or 13382, 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, of Section 23140, 23152, or 23153, of Section 191.5 of the Penal Code, or of paragraph (3) of subdivision (c) of Section 192 of that code, the person has not been administratively determined to have refused chemical testing pursuant to Section 13353 or 13353.1, or the person has not been administratively determined 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, Section 23140, 23152, or 23153, Section 191.5 of the Penal Code, or paragraph (3) of subdivision (c) of Section 192 of that code, the person has been administratively determined to have refused chemical testing pursuant to Section 13353 or 13353.1, or the person has been administratively determined 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 or to have refused chemical testing pursuant to Section 13353.1, 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 23140, 23152, or 23153, including a violation described in Section 23620, 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.

SEC. 3.16. Section 13353.7 of the Vehicle Code is amended to read:

13353.7. (a) Subject to subdivision (c) and except as provided in Section 13353.6 for persons who have commercial driver's licenses, if the person whose driving privilege has been suspended under Section 13353.2 has not been convicted of, or found to have committed, a separate violation of Section 23103, as specified in Section 23103.5, Section 23140, 23152, or 23153 of this code, or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, and if the person's privilege to operate a motor vehicle has not been suspended or revoked pursuant to Section 13353 or 13353.2 for an offense which occurred on a separate occasion within seven years of the occasion in question and, if the person subsequently enrolls in a program described in Section 11837.3 of the Health and Safety Code, pursuant to subdivision (b) of Section 23538, that person, if 21 years of age or older at the time the offense occurred, may apply to the department for a restricted driver's license limited to travel to and from the activities required by the program or to and from and in the course of the person's employment, or both. Notwithstanding any other provision of law, if the person's restricted driver's license permits travel to and from and in the course of his or her employment, the person's privilege to operate a motor vehicle shall be suspended, subject to the restriction, for six months. After receiving proof of enrollment in the program, and if the person has not been arrested subsequent to the offense for which the person's driving privilege has been suspended under Section 13353.2 for a violation of Section 23103, as specified in Section 23103.5, Section 23140, 23152, or 23153 of this code, or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, and if the person's privilege to operate a motor vehicle has not been suspended or revoked pursuant to Section 13353 or 13353.2 for an offense which occurred on a separate occasion, notwithstanding Section 13551, the department shall, after review pursuant to Section 13557, suspend the person's privilege to operate a motor vehicle for 30 days and then issue the person a restricted driver's license under the following conditions:

(1) The program shall report any failure to participate in the program to the department and shall certify successful completion of the program to the department.

(2) The person was 21 years of age or older at the time the offense occurred and gives proof of financial responsibility as defined in Section 16430.

(3) The restricted driver's license authorizes the operation of a motor vehicle only to and from the activities required under the program.

(4) If any person who has been issued a restricted license under this section fails at any time to participate in the program, the department shall suspend the restricted license immediately. The department shall give notice of the suspension under this paragraph in the same manner as prescribed in subdivision (b) of Section 13353.2 for the period specified in Section 13353.3, which is effective upon receipt by the person.

(5) On or after 60 days after the effective date of the restricted license, and upon notification of successful completion of the program, the department may issue an unrestricted driver's license to the person.

(b) If the court of jurisdiction in a criminal action arising out of the same offense orders the department to suspend or revoke the person's privilege to operate a motor vehicle or does not grant probation after conviction of that offense, notwithstanding subdivision (a), the department shall suspend or revoke the person's privilege pursuant to the order of the court or Section 13352.

(c) If the holder of a commercial driver's license was operating a commercial vehicle, as defined in Section 15210, at the time of the violation which resulted in the suspension of that person's driving privilege under Section 13353.2, the department shall, pursuant to this section, if the person is otherwise eligible, issue the person a class C driver's license restricted in the same manner and subject to the same conditions as specified in subdivision (a), except that the license shall not allow travel to and from or in the course of the person's employment.

(d) This section does not apply to a person whose driving privilege has been suspended or revoked pursuant to the order of the court or Section 13353 or 13353.2 for an offense which occurred on a separate occasion, or as a result of a conviction of a separate violation of Section 23103, as specified in Section 23103.5, or Section 23140, 23152, or 23153, which violation occurred within seven years of the offense in question. This subdivision shall be operative only so long as a one-year suspension of the driving privilege for a second or subsequent occurrence or offense, with no restricted or hardship licenses permitted, is required by Section 408 or 410 of Title 23 of the United States Code.

SEC. 3.18. 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 13388, 23612, or 13382, 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. 3.20. 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, 23612, or 13382. The department shall consider the sworn report submitted by the peace officer pursuant to Section 23612 or 13380 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 23136, 23140, 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 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 23612 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, 23140, 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 under any of the following circumstances:

(i) When the person had 0.08 percent or more, by weight, of alcohol in his or her blood.

(ii) When the person was under the age of 21 years and had 0.05 percent or more, by weight, of alcohol in his or her blood.

(iii) 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, or other chemical 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 13388, 23612, or 13382, the department shall notify the person before the expiration date of the temporary permit issued pursuant to Section 13388, 23612, or 13382, 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. 3.22. 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, 13353.1, 13353.2, 13388, 23612, or 13382 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 10 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 10 days after the person's receipt of the service of the notice of the order of suspension or revocation pursuant to Section 13353.2, 13388, 23612, or 13382.

(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 13388, 23612, or 13382, the department shall notify the person before the expiration date of the

temporary permit issued pursuant to Section 13388, 23612, or 13382, 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 13388, 23612, or 13382, 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. 3.24. Section 13380 is added to the Vehicle Code, to read:

13380. (a) If a peace officer serves a notice of an order of suspension pursuant to Section 13388, or arrests any person for a violation of Section 23140, 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 that adequately identifies the person, a statement of the officer's grounds for belief that the person violated Section 23136, 23140, 23152, or 23153, a report of the results of any chemical tests that were conducted on the person or the circumstances constituting a refusal to submit to or complete the chemical testing pursuant to Section 13388 or 23612, 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 the purposes of this section and subdivision (g) of Section 23612, "immediately" means on or before the end of the fifth ordinary business day following the arrest, except that with respect to Section 13388 only, "immediately" has the same meaning as that term is defined in paragraph (3) of subdivision (b) of Section 13388.

(b) The peace officer's sworn report shall be made on forms furnished or approved by the department.

(c) For the purposes of this section, a report prepared pursuant to subdivision (a) and received pursuant to subdivision (a) of Section 1801, is a sworn report when it bears an entry identifying the maker of the document or a signature that has been affixed by means of an electronic device approved by the department.

SEC. 4. Section 13382 is added to the Vehicle Code, to read:

13382. (a) If the chemical test results for a person who has been arrested for a violation of Section 23152 or 23153 show that the person has 0.08 percent or more, by weight, of alcohol in the person's blood, or if the chemical test results for a person who has been arrested for a violation of Section 23140 show that the person has 0.05 percent or more, by weight, of alcohol in the person's blood, the peace officer, acting on behalf of the department, shall serve a notice of order of suspension or revocation of the person's privilege to operate a motor vehicle personally on the arrested person.

(b) If the peace officer serves the notice of order of suspension or revocation, the peace 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 or revocation and shall be valid for 30 days from the date of arrest.

(c) The peace officer shall immediately forward a copy of the completed notice of order of suspension form, and any driver's license taken into possession under subdivision (b), with the report required by Section 13380, to the department. For the purposes of this section, "immediately" means on or before the end of the fifth ordinary business day following the arrest.

SEC. 5. Section 13384 is added to the Vehicle Code, to read:

13384. (a) The department 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 23612, 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 licenses 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 13388 or 23612 of the Vehicle Code."

(c) The department 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. 6. Section 13386 is added to the Vehicle Code, to read:

13386. (a) The department shall certify or cause to be certified ignition interlock devices required by this article and publish a list of approved devices.

(b) The department shall utilize information from an independent laboratory to certify ignition interlock devices on or off the premises of the manufacturer or manufacturer's agent, in accordance with the guidelines. The cost of certification shall be borne by the manufacturers of interlock ignition devices. If the

certification of a device is suspended or revoked, the manufacturer of the device shall be responsible for, and shall bear the cost of, the removal of the device and the replacement of a certified device of the manufacturer or another manufacturer.

(c) No model of ignition interlock device shall be certified unless it meets the accuracy requirements and specifications provided in the guidelines adopted by the National Highway Traffic Safety Administration.

(d) All manufacturers of ignition interlock devices that meet the requirements of subdivision (c) and are certified in a manner approved by the department, who intend to market the devices in this state, first shall apply to the department on forms provided by the department. The application shall be accompanied by a fee in an amount not to exceed the amount necessary to cover the costs incurred by the department in carrying out this section.

(e) The Administrative Office of the Courts shall ensure that standard forms and procedures are developed for documenting decisions and compliance and communicating results to relevant agencies. These forms shall include all of the following:

(1) An "Order to Install," to be issued to the probationer at the time of sentencing. This shall include the conditions of the sentence and be accompanied by a toll-free telephone number for each manufacturer of a certified ignition interlock device. Information regarding approved installation locations shall be provided to drivers by manufacturers with ignition interlock devices that have been certified in accordance with this section. Copies of the "Order to Install" shall be provided for the court, the probationer, and the probation department, or other monitoring agency.

(2) A "Verification of Installation" form to be returned to the court by the probationer within a specified time period. Copies shall be provided for the court, the probationer, the manufacturer or manufacturer's agent, and the probation department or other monitoring agency.

(3) Verification of calibration, and compliance, forms and procedures to ensure continued use of the interlock device during the probation period and to ensure compliance with maintenance requirements. The maintenance period shall be standardized at 60 days to maximize monitoring checks for equipment tampering.

SEC. 7. Section 13388 is added to the Vehicle Code, to read:

13388. (a) 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. If a preliminary alcohol screening test device is not immediately available, the officer may request the person to submit

to chemical testing of his or her blood, breath, or urine, conducted pursuant to Section 23612.

(b) If the person refuses to take, or fails to complete, the preliminary alcohol screening test or refuses to take or fails to complete a chemical test if a preliminary alcohol device is not immediately available, or if the person takes the preliminary alcohol screening test and that test reveals a blood-alcohol concentration of 0.01 percent or greater, or if the results of a chemical test reveal 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.

(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 13380, to the department. For the purposes of this paragraph, "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.

SEC. 8. Section 13390 is added to the Vehicle Code, to read:

13390. 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.

SEC. 9. Section 13392 is added to the Vehicle Code, to read:

13392. Any person whose license is suspended or delayed issuance pursuant to Section 13388 shall pay to the department, in addition to any other fees required for the reissuance, return, or issuance of a driver's license, one hundred dollars ($100) for the reissuance, return, or issuance of his or her driver's license.

SEC. 10. Section 14601.2 of the Vehicle Code is amended to read:

14601.2. (a) No person shall drive a motor vehicle at any time when that person's driving privilege is suspended or revoked for a conviction of a violation of Section 23152 or 23153, if the person so driving has knowledge of the suspension or revocation.

(b) Except in full compliance with the restriction, no person shall drive a motor vehicle at any time when that person's driving privilege is restricted pursuant to Article 2 (commencing with Section 23152) of Chapter 12 of Division 11, if the person so driving has knowledge of the restriction.

(c) Knowledge of suspension or revocation of the driving privilege shall be conclusively presumed if mailed notice has been given by the department to the person pursuant to Section 13106. Knowledge of restriction of the driving privilege shall be presumed if notice has been given by the court to the person. The presumption established by this subdivision is a presumption affecting the burden of proof.

(d) Any person convicted of a violation of this section shall be punished as follows:

(1) Upon a first conviction, by imprisonment in the county jail for not less than 10 days or more than six months and by a fine of not less than three hundred dollars ($300) or more than one thousand dollars ($1,000), unless the person has been designated an habitual traffic offender under subdivision (b) of Section 23546, subdivision (b) of Section 23550, or subdivision (b) of Section 23175.5, in which case the person shall, in addition, be sentenced as provided in paragraph (3) of subdivision (e) of Section 14601.3.

(2) If the offense occurred within five years of a prior offense which resulted in a conviction of a violation of this section or Section 14601, 14601.1, or 14601.5, by imprisonment in the county jail for not less than 30 days or more than one year and by a fine of not less than five hundred dollars ($500) or more than two thousand dollars ($2,000), unless the person has been designated an habitual traffic offender under subdivision (b) of Section 23546 or subdivision (b) of Section 23550, in which case the person shall, in addition, be sentenced as provided in paragraph (3) of subdivision (e) of Section 14601.3.

(e) If any person is convicted of a first offense under this section and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for at least 10 days.

(f) If the offense occurred within five years of a prior offense which resulted in a conviction of a violation of this section or Section 14601, 14601.1, or 14601.5 and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for at least 30 days.

(g) If any person is convicted of a second or subsequent offense which results in a conviction of this section within seven years, but over five years, of a prior offense which resulted in a conviction of a violation of this section or Section 14601, 14601.1, or 14601.5 and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for at least 10 days.

(h) Nothing in this section prohibits a person who is participating in, or has completed, an alcohol or drug rehabilitation program from driving a motor vehicle, which is owned or utilized by the person's employer, during the course of employment on private property which is owned or utilized by the employer, except an offstreet parking facility as defined in subdivision (d) of Section 12500.

SEC. 10.2. Section 14601.3 of the Vehicle Code is amended to read:

14601.3. (a) It is unlawful for a person whose driving privilege has been suspended or revoked to accumulate a driving record history which results from driving during the period of suspension or revocation. A person who violates this subdivision is designated an habitual traffic offender.

For purposes of this section, a driving record history means any of the following, if the driving occurred during any period of suspension or revocation:

(1) Two or more convictions within a 12-month period of an offense given a violation point count of two pursuant to Section 12810.

(2) Three or more convictions within a 12-month period of an offense given a violation point count of one pursuant to Section 12810.

(3) Three or more accidents within a 12-month period that are subject to the reporting requirements of Section 16000.

(4) Any combination of convictions or accidents, as specified in paragraphs (1) to (3), inclusive, which results during any 12-month period in a violation point count of three or more pursuant to Section 12810.

(b) Knowledge of suspension or revocation of the driving privilege shall be conclusively presumed if mailed notice has been given by the department to the person pursuant to Section 13106. The presumption established by this subdivision is a presumption affecting the burden of proof.

(c) The department, within 30 days of receipt of a duly certified abstract of the record of any court or accident report which results in a person being designated an habitual traffic offender, may execute and transmit by mail a notice of that designation to the office of the district attorney having jurisdiction over the location of the person's last known address as contained in the department's records.

(d) (1) The district attorney, within 30 days of receiving the notice required in subdivision (c), shall inform the department of whether or not the person will be prosecuted for being an habitual traffic offender.

(2) Notwithstanding any other provision of this section, any habitual traffic offender designated under subdivision (b) of Section 23546, subdivision (b) of Section 23550, or subdivision (b) of Section 23175.5, who is convicted of violating Section 14601.2 shall be sentenced as provided in paragraph (3) of subdivision (e).

(e) Any person convicted under this section of being an habitual traffic offender shall be punished as follows:

(1) Upon a first conviction, by imprisonment in the county jail for 30 days and by a fine of one thousand dollars ($1,000).

(2) Upon a second or any subsequent offense within seven years of a prior conviction under this section, by imprisonment in the county jail for 180 days and by a fine of two thousand dollars ($2,000).

(3) Any habitual traffic offender designated under Section 193.7 of the Penal Code or under subdivision (b) of Section 23546, subdivision (b) of Section 23550, subdivision (b) of Section 23175.5, or subdivision (d) of Section 23566 who is convicted of a violation of Section 14601.2 shall be punished by imprisonment in the county jail for 180 days and by a fine of two thousand dollars ($2,000). The penalty in this paragraph shall be consecutive to that imposed for the violation of any other law.

SEC. 10.4. Section 14602 of the Vehicle Code is repealed.

SEC. 11. Section 14905 of the Vehicle Code is amended to read:

14905. (a) Notwithstanding any other provision of this code, in lieu of the fees in Section 14904, before a driver's license may be issued, reissued, or returned to a person after suspension or revocation of the person's privilege to operate a motor vehicle pursuant to Section 13353 or 13353.2, there shall be paid to the department a fee in an amount of one hundred dollars ($100) to pay the costs of the administration of the administrative suspension and revocation programs for persons who refuse or fail to complete chemical testing, as provided in Section 13353, or who drive with an excessive amount of alcohol in their blood, as provided in Section 13353.2, any costs of the Department of the California Highway Patrol related to the payment of compensation for overtime for attending any administrative hearings pursuant to Article 3 (commencing with Section 14100) of Chapter 3 and Section 13382, and any reimbursement for costs mandated by the state pursuant to subdivisions (f) and (g) of Section 23612.

(b) This section does not apply to a suspension or revocation that is set aside by the department or a court.

SEC. 11.5. 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, county, or jurisdiction of a state agency 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) (1) 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.

(2) When an officer serves a notice of an order of suspension or revocation pursuant to Section 13388.

(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 that the vehicle has been issued five or more notices of parking violations to which the owner or person in control of the vehicle has not responded within 21 calendar days of notice of citation issuance or citation issuance or 14 calendar days of the mailing 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 six months 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, 14601.3, 14601.4, 14601.5, or 14604 and the vehicle has not been

impounded pursuant to Section 22655.5. Any vehicle so removed from the highway or any public lands, or from private property after having been on a highway or 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.

(t) When a peace officer issues a notice to appear for a violation of Section 25279.

SEC. 11.9. Section 23103.5 of the Vehicle Code is amended to read:

23103.5. (a) When the prosecution agrees to a plea of guilty or nolo contendere to a charge of a violation of Section 23103 in satisfaction of, or as a substitute for, an original charge of a violation of Section 23152, the prosecution shall state for the record a factual basis for the satisfaction or substitution, including whether or not there had been consumption of any alcoholic beverage or ingestion or administration of any drug, or both, by the defendant in connection with the offense. The statement shall set forth the facts which show whether or not there was a consumption of any alcoholic beverage or the ingestion or administration of any drug by the defendant in connection with the offense.

(b) The court shall advise the defendant, prior to the acceptance of the plea offered pursuant to a factual statement pursuant to subdivision (a), of the consequences of a conviction of a violation of Section 23103 as set forth in subdivision (c).

(c) If the court accepts the defendant's plea of guilty or nolo contendere to a charge of a violation of Section 23103 and the prosecutor's statement under subdivision (a) states that there was consumption of any alcoholic beverage or the ingestion or administration of any drugs by the defendant in connection with the offense, the resulting conviction shall be a prior offense for the purposes of Section 23540, 23546, 23550, 23560, 23566, or 23622, as specified in those sections.

(d) The court shall notify the Department of Motor Vehicles of each conviction of Section 23103 which shall be a prior offense for purposes of Section 23540, 23546, 23550, 23560, 23566, or 23622, as provided in this section.

SEC. 11.11. Section 23137 of the Vehicle Code is repealed.

SEC. 12. Section 23138 of the Vehicle Code is repealed.

SEC. 13. Section 23139 of the Vehicle Code is repealed.

SEC. 14. Section 23141 of the Vehicle Code is repealed.

SEC. 15. Section 23142 of the Vehicle Code is repealed.

SEC. 16. Section 23143 of the Vehicle Code is repealed.

SEC. 17. Section 23144 of the Vehicle Code is repealed.

SEC. 18. Section 23145 of the Vehicle Code is repealed.

SEC. 19. Section 23145.2 of the Vehicle Code is repealed.

SEC. 20. Section 23145.3 of the Vehicle Code is repealed.

SEC. 21. Section 23145.5 of the Vehicle Code is repealed.

SEC. 22. Section 23145.6 of the Vehicle Code is repealed.

SEC. 23. Section 23145.8 of the Vehicle Code is repealed.

SEC. 24. Section 23146 of the Vehicle Code is repealed.

SEC. 24.5. Section 23147 of the Vehicle Code is repealed.

SEC. 25. Section 23154 of the Vehicle Code is repealed.

SEC. 26. Section 23155 of the Vehicle Code is repealed.

SEC. 27. Section 23156 of the Vehicle Code is repealed.

SEC. 28. Section 23157 of the Vehicle Code is repealed.

SEC. 29. Section 23157.5 of the Vehicle Code is repealed.

SEC. 30. Section 23158 of the Vehicle Code is amended to read:

23158. (a) Only a licensed physician and surgeon, registered nurse, licensed vocational nurse, duly licensed clinical laboratory technologist or clinical laboratory bioanalyst, unlicensed laboratory personnel regulated pursuant to Sections 1242, 1242.5, and 1246 of the Business and Professions Code, or certified paramedic acting at the request of a peace officer may withdraw blood for the purpose of determining the alcoholic content therein. This limitation does not apply to the taking of breath specimens. An emergency call for paramedic services takes precedence over a peace officer's request for a paramedic to withdraw blood for determining its alcoholic content. A certified paramedic shall not withdraw blood for this purpose unless authorized by his or her employer to do so.

(b) The person tested may, at his own expense, have a licensed physician and surgeon, registered nurse, licensed vocational nurse, duly licensed clinical laboratory technologist or clinical laboratory

bioanalyst, unlicensed laboratory personnel regulated pursuant to Sections 1242, 1242.5, and 1246 of the Business and Professions Code, or any other person of his or her own choosing administer a test in addition to any test administered at the direction of a peace officer for the purpose of determining the amount of alcohol in the person's blood at the time alleged as shown by chemical analysis of his or her blood, breath, or urine. The failure or inability to obtain an additional test by a person does not preclude the admissibility in evidence of the test taken at the direction of a peace officer.

(c) Upon the request of the person tested, full information concerning the test taken at the direction of the peace officer shall be made available to the person or the person's attorney.

(d) Notwithstanding any other provision of law, no licensed physician and surgeon, registered nurse, licensed vocational nurse, duly licensed clinical laboratory technologist or clinical laboratory bioanalyst, unlicensed laboratory personnel regulated pursuant to Sections 1242, 1242.5, and 1246 of the Business and Professions Code, or certified paramedic, or hospital, laboratory, or clinic employing or utilizing the services of the licensed physician and surgeon, registered nurse, licensed vocational nurse, duly licensed laboratory technologist or clinical laboratory bioanalyst, unlicensed laboratory personnel regulated pursuant to Sections 1242, 1242.5, and 1246 of the Business and Professions Code, or certified paramedic, owning or leasing the premises on which tests are performed, shall incur any civil or criminal liability as a result of the administering of a blood test in a reasonable manner in a hospital, medical laboratory, or medical clinic environment, according to accepted medical practices, without violence by the person administering the test, and when requested in writing by a peace officer to administer the test.

(e) If the test given under Section 23612 is a chemical test of urine, the person tested shall be given such privacy in the taking of the urine specimen as will ensure the accuracy of the specimen and, at the same time, maintain the dignity of the individual involved.

(f) The department, in cooperation with the State Department of Health Services or any other appropriate agency, shall adopt uniform standards for the withdrawal, handling, and preservation of blood samples prior to analysis.

(g) As used in this section, "certified paramedic" does not include any employee of a fire department.

(h) Consent, waiver of liability, or the offering to, acceptance by, or refusal of consent or waiver of liability by the person on whom a test is administered, is not an issue or relevant to the immunity from liability for medical personnel or the medical facility under subdivision (d).

SEC. 30.5. Section 23158.2 of the Vehicle Code is repealed.

SEC. 31. Section 23158.5 of the Vehicle Code is repealed.

SEC. 32. Section 23159 of the Vehicle Code is repealed.

SEC. 33. Section 23159.5 of the Vehicle Code is repealed.

SEC. 34. Section 23160 of the Vehicle Code is repealed.
SEC. 35. Section 23161 of the Vehicle Code is repealed.
SEC. 36. Section 23165 of the Vehicle Code is repealed.
SEC. 37. Section 23166 of the Vehicle Code is repealed.
SEC. 38. Section 23167 of the Vehicle Code is repealed.
SEC. 39. Section 23170 of the Vehicle Code is repealed.
SEC. 40. Section 23171 of the Vehicle Code is repealed.
SEC. 41. Section 23175 of the Vehicle Code is repealed.
SEC. 41.5. Section 23175.5 of the Vehicle Code is repealed.
SEC. 42. Section 23176 of the Vehicle Code is repealed.
SEC. 43. Section 23180 of the Vehicle Code is repealed.
SEC. 44. Section 23181 of the Vehicle Code is repealed.
SEC. 45. Section 23182 of the Vehicle Code is repealed.
SEC. 46. Section 23185 of the Vehicle Code is repealed.
SEC. 47. Section 23186 of the Vehicle Code is repealed.
SEC. 48. Section 23187 of the Vehicle Code is repealed.
SEC. 49. Section 23190 of the Vehicle Code is repealed.
SEC. 50. Section 23191 of the Vehicle Code is repealed.
SEC. 51. Section 23192 of the Vehicle Code is repealed.
SEC. 52. Section 23194 of the Vehicle Code is repealed.
SEC. 53. Section 23195 of the Vehicle Code is repealed.
SEC. 54. Section 23196 of the Vehicle Code is repealed.
SEC. 55. Section 23197 of the Vehicle Code is repealed.
SEC. 56. Section 23198 of the Vehicle Code is repealed.
SEC. 57. Section 23199 of the Vehicle Code is repealed.
SEC. 58. Section 23200 of the Vehicle Code is repealed.
SEC. 59. Section 23201 of the Vehicle Code is repealed.
SEC. 60. Section 23202 of the Vehicle Code is repealed.
SEC. 61. Section 23203 of the Vehicle Code is repealed.
SEC. 62. Section 23204 of the Vehicle Code is repealed.
SEC. 63. Section 23205 of the Vehicle Code is repealed.
SEC. 64. Section 23206 of the Vehicle Code is repealed.
SEC. 65. Section 23206.1 of the Vehicle Code is repealed.
SEC. 66. Section 23206.5 of the Vehicle Code is repealed.
SEC. 67. Section 23207 of the Vehicle Code is repealed.
SEC. 68. Section 23208 of the Vehicle Code is repealed.
SEC. 69. Section 23209 of the Vehicle Code is repealed.
SEC. 70. Section 23210 of the Vehicle Code is repealed.
SEC. 71. Section 23211 of the Vehicle Code is repealed.
SEC. 72. Section 23212 of the Vehicle Code is repealed.
SEC. 72.5. Section 23217 of the Vehicle Code is amended to read:

23217. The Legislature finds and declares that some repeat offenders of the prohibition against driving under the influence of alcohol or drugs, when they are addicted or when they have too much alcohol in their systems, may be escaping the intent of the Legislature to punish the offender with progressively greater severity if the offense is repeated one or more times within a seven-year period.

This situation may occur when a conviction for a subsequent offense occurs before a conviction is obtained on an earlier offense.

The Legislature further finds and declares that the timing of court proceedings should not permit a person to avoid aggravated mandatory minimum penalties for multiple separate offenses occurring within a seven-year period. It is the intent of the Legislature to provide that a person be subject to enhanced mandatory minimum penalties for multiple offenses within a period of seven years, regardless of whether the convictions are obtained in the same sequence as the offenses had been committed.

Nothing in this section requires consideration of judgment of conviction in a separate proceeding which is entered after the judgment in the present proceeding, except as it relates to violation of probation.

Nothing in this section or the amendments to Section 23540, 23546, 23550, 23560, 23566, 23622, or 23640 made by Chapter 1205 of the Statutes of 1984 affects the penalty for a violation of Section 23152 or 23153 occurring prior to January 1, 1985.

SEC. 73. Section 23235 of the Vehicle Code is repealed.

SEC. 74. Section 23246 of the Vehicle Code is repealed.

SEC. 74.5. Section 23247 of the Vehicle Code is amended to read:

23247. (a) It is unlawful for a person to knowingly rent, lease, or lend a motor vehicle to another person known to have had his or her driving privilege restricted as provided in Section 23575, unless the vehicle is equipped with a functioning, certified ignition interlock device. Any person, whose driving privilege is restricted pursuant to Section 23575 shall notify any other person who rents, leases, or loans a motor vehicle to him or her of the driving restriction imposed under that section.

(b) It is unlawful for any person whose driving privilege is restricted pursuant to Section 23575 to request or solicit any other person to blow into an ignition interlock device or to start a motor vehicle equipped with the device for the purpose of providing the person so restricted with an operable motor vehicle.

(c) It is unlawful to blow into an ignition interlock device or to start a motor vehicle equipped with the device for the purpose of providing an operable motor vehicle to a person whose driving privilege is restricted pursuant to Section 23575.

(d) It is unlawful to tamper with, or circumvent the operation of, an ignition interlock device.

(e) It is unlawful for any person whose driving privilege is restricted pursuant to Section 23575 to operate any vehicle not equipped with a functioning ignition interlock device or any vehicle that a court orders him or her not to operate.

(f) Any person convicted of a violation of this section shall be punished by imprisonment in the county jail for not more than six months or by a fine of not more than five thousand dollars ($5,000), or by both that fine and imprisonment.

(g) If any person who is restricted pursuant to Section 23575 violates this section, the court shall notify the Department of Motor Vehicles, which shall revoke the person's driving privilege for one year from the date the court finds that the person violated this section. Immediately upon revocation, the order for installation imposed in accordance with subdivision (b) of Section 23575 shall be deemed extended for a period equal to the period of revocation and until the person has petitioned the court for review of a continued restriction, pursuant to subdivision (d) of Section 23575.

(h) If any person who is restricted pursuant to Section 23575 violates subdivision (e), by operating a vehicle that the court has ordered him or her not to operate, the court shall order the installation of an ignition interlock device on the vehicle that the person used in violating subdivision (e). The order shall be consistent with the provisions of Section 23575.

(i) It is an affirmative defense to a criminal prosecution, with the exception of a prosecution for violation of Section 12500, 12951, 14601, 14601.1, 14601.2, 14601.3, or 14601.4, or a probation violation under this article if the defendant or violator can show either of the following circumstances:

(1) If he or she had his or her valid driving privilege restricted pursuant to Section 23575 and leased, rented, or borrowed a vehicle for an emergency use when no other feasible alternative was available, or for a bona fide business purpose when he or she was away from his or her regular place of business.

(2) If he or she rented, leased, or loaned a vehicle to another person, whose valid driving privilege was restricted pursuant to Section 23575, for an emergency use when no other feasible alternative was available, or for a bona fide business purpose when the person subject to the restriction was away from his or her regular place of business.

(j) Nothing in this section permits a person to drive without a valid driver's license. The court shall advise the person that installation of an ignition interlock device on a vehicle does not allow the person to drive without a valid driver's license.

SEC. 75. Section 23248 of the Vehicle Code is repealed.

SEC. 76. Section 23249 of the Vehicle Code is repealed.

SEC. 77. Section 23249.52 of the Vehicle Code is repealed.

SEC. 78. Section 23249.53 of the Vehicle Code is repealed.

SEC. 79. Section 23249.54 of the Vehicle Code is repealed.

SEC. 80. Section 23249.55 of the Vehicle Code is repealed.

SEC. 81. Section 23249.56 of the Vehicle Code is repealed.

SEC. 82. Section 23249.57 of the Vehicle Code is repealed.

SEC. 83. Section 23249.58 of the Vehicle Code is repealed.

SEC. 84. Division 11.5 (commencing with Section 23500) is added to the Vehicle Code, to read:

DIVISION 11.5. SENTENCING FOR DRIVING WHILE UNDER THE INFLUENCE

CHAPTER 1. COURT-IMPOSED PENALTIES: PERSONS LESS THAN 21 YEARS OF AGE

Article 1. General Provisions

23500. This chapter applies to the imposition of penalties and sanctions by the courts on persons who were less than 21 years of age at the time of the commission of the driving while under the influence offenses described in Chapter 12 (commencing with Section 23100) of Division 11.

Article 2. Penalties for a Violation of Section 23140

23502. Any person found to have committed a violation of Section 23140 shall be required to participate in an alcohol education program. The court shall require the minor to participate in an alcohol education program or a community service program which provides an alcohol education component unless the court finds that the minor, or the minor's parent or parents, is unable to pay required fees for the program, there is no appropriate program located in the county, or other specific circumstances justify failure to impose this requirement.

23504. If any person is found to have violated Section 23140 and is also found to have violated Section 23152 or 23153, in addition to, and not as an alternative to, the requirements of Section 23520 or any other provision of Article 2 (commencing with Section 23152), that person shall be required to participate in the alcohol education program or the alcohol rehabilitation program required by this article.

23506. Notwithstanding Section 6929 of the Family Code, if the court finds it just and reasonable, the court may order the parent or parents of a minor who is ordered to participate in an alcohol education program or a community service program that provides an alcohol education component pursuant to this article, to pay the required fees for the program.

23508. (a) The court may order the department to suspend, revoke, or delay issuance of, and the department, when so ordered, shall suspend, revoke, or delay issuance of the driving privileges of any person convicted of a violation of Section 23140 under both of the following circumstances:

(1) The court has required the person to participate in an alcohol education program or a community service program pursuant to Section 23502, except those persons excluded from participation in a program for reasons specified in Section 23502.

(2) The person fails to show proof of completion of the program as required by the court.

(b) The suspension, revocation, or delay in issuance shall remain in effect until the earlier of either of the following:

(1) The person shows proof of completion of the program satisfactory to the court, and the court orders the department to terminate the suspension, revocation, or delay in issuance of driving privileges.

(2) The date the person reaches the age of 21 years.

Article 3. Youthful Drunk Driver Visitation Program

23509. This article shall be known and may be cited as the "Youthful Drunk Driver Visitation Program Act."

23510. The Legislature finds and declares all of the following:

(a) Young drivers often do not realize the consequences of drinking alcohol or ingesting any other drugs, whether legal or not, and driving a motor vehicle while their physical capabilities to drive safely are impaired by those substances.

(b) Young drivers who use alcohol or other drugs are likely to become dependent on those substances and prompt intervention is needed to protect other persons, as well as the young driver, from death or serious injury.

(c) The conviction of a young driver for driving under the influence of an alcoholic beverage, a drug, or both, identifies that person as a risk to the health and safety of others, as well as that young driver, because of the young driver's inability to control his or her conduct.

(d) It has been demonstrated that close observation of the effects on others of alcohol and other drugs, both chronic and acute, by a young driver convicted of driving under the influence has a marked effect on recidivism and should therefore be encouraged by the courts, prehospital emergency medical care personnel, and other officials charged with cleaning up the carnage and wreckage caused by drunk drivers.

(e) The program prescribed in this article provides guidelines for the operation of an intensive program to discourage recidivism by convicted young drunk drivers.

23512. For the purposes of this article, "program" means the Youthful Drunk Driver Visitation Program prescribed in this article.

23514. (a) If a person is found to be in violation of Section 23140, is convicted of, or is adjudged a ward of the juvenile court for, a violation of Section 21200.5, 23140, or 23152 punishable under Section 23536, or Section 23220, 23221, or 23222, subdivision (a) or (b) of Section 23224, or Section 23225 or 23226, and is granted probation, the court may order, with the consent of the defendant or ward, as a term and condition of probation in addition to any other term and

condition required or authorized by law, that the defendant or ward participate in the program.

(b) The court shall give preference for participation in the program to defendants or wards who were less than 21 years of age at the time of the offense if the facilities of the program in the jurisdiction are limited to fewer than the number of defendants or wards eligible and consenting to participate.

(c) The court shall require that the defendant or ward not drink any alcoholic beverage at all before reaching the age of 21 years and not use illegal drugs.

23516. The court shall investigate and consult with the defendant or ward, defendant's or ward's counsel, if any, and any proposed supervisor of a visitation under the program, and the court may consult with any other person whom the court finds may be of value, including, but not limited to, the defendant's or ward's parents or other family members, in order to ascertain that the defendant or ward is suitable for the program, that the visitation will be educational and meaningful to the defendant or ward, and that there are no physical, emotional, or mental reasons to believe the program would not be appropriate or would cause any injury to the defendant or ward.

23517. (a) To the extent that personnel and facilities are made available to the court, the court may include a requirement for supervised visitation by the defendant or ward to all, or any, of the following:

(1) A trauma facility, as defined in Section 1798.160 of the Health and Safety Code, a base hospital designated pursuant to Section 1798.100 or 1798.101 of the Health and Safety Code, or a general acute care hospital having a basic emergency medical services special permit issued pursuant to subdivision (c) of Section 1277 of the Health and Safety Code that regularly receives victims of vehicle accidents, between the hours of 10 p.m. and 2 a.m. on a Friday or Saturday night to observe appropriate victims of vehicle accidents involving drinking drivers, under the supervision of any of the following:

(A) A registered nurse trained in providing emergency trauma care or prehospital advanced life support.

(B) An emergency room physician.

(C) An emergency medical technician-paramedic or an emergency medical technician II.

(2) A facility that cares for advanced alcoholics, such as a chemical dependency recovery hospital, as defined in Section 1250.3 of the Health and Safety Code, to observe persons in the terminal stages of alcoholism or drug abuse, under the supervision of appropriately licensed medical personnel.

(3) If approved by the county coroner, the county coroner's office or the county morgue to observe appropriate victims of vehicle

accidents involving drinking drivers, under the supervision of the coroner or a deputy coroner.

(b) As used in this section, "appropriate victims" means victims whose condition is determined by the visitation supervisor to demonstrate the results of accidents involving drinking drivers without being excessively gruesome or traumatic to the probationer.

(c) If persons trained in counseling or substance abuse are made available to the court, the court may coordinate the visitation program or the visitations at any facility designated in subdivision (a) through those persons.

(d) Any visitation shall include, before any observation of victims or disabled persons by the probationer, a comprehensive counseling session with the visitation supervisor at which the supervisor shall explain and discuss the experiences which may be encountered during the visitation in order to ascertain whether the visitation is appropriate for the probationer.

(e) If at any time, whether before or during a visitation, the supervisor of the probationer determines that the visitation may be or is traumatic or otherwise inappropriate for the probationer, or is uncertain whether the visitation may be traumatic or inappropriate, the visitation shall be terminated without prejudice to the probationer.

23518. (a) The program may include a personal conference after the visitations described in Section 23517 between the sentencing judge or judicial officer or the person responsible for coordinating the program for the judicial district and the probationer, his or her counsel, and, if available, the probationer's parents to discuss the experiences of the visitation and how those experiences may impact the probationer's future conduct.

(b) If a personal conference described in subdivision (a) is not practicable, because of the probationer's absence from the jurisdiction, conflicting time schedules, or other reasons, the program should provide for a written report or letter by the probationer to the court discussing the experiences and their impact on the probationer.

23518.5. The county, a court, any facility visited pursuant to the program, the agents, employees, or independent contractors of the court, county, or facility visited pursuant to the program, and any person supervising a probationer during the visitation, is not liable for any civil damages resulting from injury to the probationer, or civil damages caused by the probationer, during, or from any activities relating to, the visitation, except for willful or grossly negligent acts intended to, or reasonably expected to result in, that injury or damage and except for workers' compensation for the probationer as prescribed by law if the probationer performs community service at the facility as an additional term or condition of probation.

Article 4. Penalties for a Violation of Section 23152 or 23153

23520. (a) Whenever, in any county specified in subdivision (b), a judge of a juvenile court, a juvenile traffic hearing officer, or referee of a juvenile court finds that a person has committed a first violation of Section 23152 or 23153, the person shall be required to participate in and successfully complete an alcohol or drug education program, or both of those programs, as designated by the court. The expense of the person's attendance in the program shall be paid by the person's parents or guardian so long as the person is under the age of 18 years, and shall be paid by the person thereafter. However, in approving the program, each county shall require the program to provide for the payment of the fee for the program in installments by any person who cannot afford to pay the full fee at the commencement of the program and shall require the program to provide for the waiver of the fee for any person who is indigent, as determined by criteria for indigency established by the board of supervisors. Whenever it can be done without substantial additional cost, each county shall require that the program be provided for juveniles at a separate location from, or at a different time of day than, alcohol and drug education programs for adults.

(b) This section applies only in those counties that have one or more alcohol or drug education programs certified by the county alcohol program administrator and approved by the board of supervisors.

23521. Any finding of a juvenile court judge, juvenile traffic hearing officer, or referee of a juvenile court of a commission of an offense in any state, territory, possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or the Dominion of Canada which, if committed in this state, would be a violation of Section 23152, is a conviction of a violation of Section 23152 for the purposes of Sections 13352, 13352.3, and 13352.5, and the finding of a juvenile court judge, juvenile traffic hearing officer, or referee of a juvenile court of a commission of an offense which, if committed in this state, would be a violation of Section 23153 is a conviction of a violation of Section 23153 for the purposes of Sections 13352, 13352.3, and 13352.5.

23522. If a person is convicted of a violation of Section 23152 punishable under Section 23546 , 23550, or 23550.5, or a violation of Section 23153 punishable under Section 23566, including a violation of paragraph (3) of subdivision (c) of Section 192 of the Penal Code as provided in Section 193.7 of that code, the court shall, at the time of surrender of the driver's license or temporary permit, require the defendant to sign an affidavit in a form provided by the department acknowledging his or her understanding of the revocation required by paragraph (5), (6), or (7) of subdivision (a) of Section 13352, and an acknowledgment of his or her designation as an habitual traffic offender. A copy of this affidavit shall be transmitted, with the license

or temporary permit, to the department within the prescribed 10 days.

23524. (a) (1) Whenever a person is convicted of a violation of any of the following offenses committed while driving a motor vehicle of which he or she is the owner, the court, at the time sentence is imposed on the person, may order the motor vehicle impounded for a period of not more than six months for a first conviction, and not more than 12 months for a second or subsequent conviction:

(A) Driving with a suspended or revoked driver's license.

(B) A violation of Section 2800.2 resulting in an accident or Section 2800.3, if either violation occurred within seven years of one or more separate convictions for a violation of any of the following:

(i) Section 23103, if the vehicle involved in the violation was driven at a speed of 100 or more miles per hour.

(ii) Section 23152.

(iii) Section 23153.

(iv) Section 191.5 of the Penal Code.

(v) Subdivision (c) of Section 192 of the Penal Code.

(2) The cost of keeping the vehicle is a lien on the vehicle pursuant to Chapter 6.5 (commencing with Section 3067) of Title 14 of Part 4 of Division 3 of the Civil Code.

(b) Notwithstanding subdivision (a), any motor vehicle impounded pursuant to this section that is subject to a chattel mortgage, conditional sale contract, or lease contract shall be released by the court to the legal owner upon the filing of an affidavit by the legal owner that the chattel mortgage, conditional sale contract, or lease contract is in default and shall be delivered to the legal owner upon payment of the accrued cost of keeping the vehicle.

CHAPTER 2. COURT PENALTIES

Article 1. General Provisions

23530. This chapter applies to the imposition of penalties, sanctions, and probation upon persons convicted of violating driving while under the influence offenses that are set forth in Chapter 12 (commencing with Section 23100) of Division 11.

Article 2. Penalties for a Violation of Section 23152

23536. (a) If any person is convicted of a first violation of Section 23152, that person shall be punished by imprisonment in the county jail for not less than 96 hours, at least 48 hours of which shall be continuous, nor more than six months and by a fine of not less than three hundred ninety dollars ($390) nor more than one thousand dollars ($1,000).

(b) The court shall order that any person punished under subdivision (a), who is to be punished by imprisonment in the county jail, be imprisoned on days other than days of regular employment of the person, as determined by the court. If the court determines that 48 hours of continuous imprisonment would interfere with the person's work schedule, the court shall allow the person to serve the imprisonment whenever the person is normally scheduled for time off from work. The court may make this determination based upon a representation from the defendant's attorney or upon an affidavit or testimony from the defendant.

(c) Except as provided in Section 23538, the court shall order the Department of Motor Vehicles to suspend the privilege to operate a motor vehicle of a person punished under this section for six months pursuant to paragraph (1) of subdivision (a) of Section 13352.

23538. (a) Except as provided in subdivision (e), if the court grants probation to any person punished under Section 23536, in addition to the provisions of Section 23600 and any other terms and conditions imposed by the court, the court shall impose as a condition of probation that the person be subject to one of the following:

(1) Be confined in the county jail for at least 48 hours but not more than six months, and pay a fine of at least three hundred ninety dollars ($390) but not more than one thousand dollars ($1,000). The court may order the Department of Motor Vehicles to suspend the privilege to operate a motor vehicle pursuant to paragraph (1) of subdivision (a) of Section 13352 when this condition of probation is imposed.

(2) Pay a fine of at least three hundred ninety dollars ($390) but not more than one thousand dollars ($1,000), and, if the person gives proof of financial responsibility, as defined in Section 16430, to the Department of Motor Vehicles, have the privilege to operate a motor vehicle restricted for 90 days to necessary travel to and from that person's place of employment and to and from participation in a program described in subdivision (b). If driving a motor vehicle is necessary to perform the duties of the person's employment, the restriction also shall allow the person to drive to locations within the person's scope of employment. Whenever the driving privilege is restricted pursuant to this paragraph, the person shall maintain proof of financial responsibility for three years.

(3) If the court elects to order a 90-day restriction as provided for in paragraph (2), the court shall order that the restriction commence on the date of the reinstatement by the Department of Motor Vehicles of the person's privilege to operate a motor vehicle. If a suspension was imposed pursuant to Section 13353.2, the person shall be advised by the court of all of the following matters:

(A) The person's restricted driver's license does not allow the person to operate a motor vehicle unless and until the suspension under Section 13353.2 has either been served to completion or set aside, and his or her license has been reinstated.

(B) The restriction of the driver's license ordered by the court shall commence upon the reinstatement of the privilege to operate a motor vehicle.

(b) Except as provided in subdivision (c), in any county where the board of supervisors has approved, and the State Department of Alcohol and Drug Programs has licensed, a program or programs described in Section 11837.3 of the Health and Safety Code, the court shall also impose as a condition of probation that the driver shall enroll and participate in, and successfully complete, an alcohol and other drug education and counseling program, licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, in the driver's county of residence or employment, as designated by the court.

(c) For persons who are active duty personnel in the United States Navy or Marine Corps, the court, unless the defendant requests otherwise, shall impose as a condition of probation that the driver participate in, and successfully complete, the Navy Alcohol Drug Safety Action Program rather than a program described in Section 11837.3 of the Health and Safety Code.

(d) (1) The court shall revoke the person's probation pursuant to Section 23602, except for good cause shown, for the failure to enroll in, participate in, or complete a program specified in subdivision (b) or (c).

(2) The court, in establishing reporting requirements, shall consult with the county alcohol program administrator. The county alcohol program administrator shall coordinate the reporting requirements with the department and with the State Department of Alcohol and Drug Programs. That reporting shall ensure that all persons who, after being ordered to attend and complete a program, may be identified for either (1) failure to enroll in, or failure to successfully complete, the program, or (2) successful completion of the program as ordered.

(e) Notwithstanding subdivision (a), if the offense occurred in a vehicle requiring a driver with a class A or class B driver's license or with an endorsement specified in Section 15278, the court shall upon conviction order the department to suspend the driver's privilege pursuant to paragraph (1) of subdivision (a) of Section 13352.

23540. If any person is convicted of a violation of Section 23152 and the offense occurred within seven years of a separate violation of Section 23103, as specified in Section 23103.5, which occurred on or after January 1, 1982, 23152, or 23153, which resulted in a conviction, that person shall be punished by imprisonment in the county jail for not less than 90 days nor more than one year and by a fine of not less than three hundred ninety dollars ($390) nor more than one thousand dollars ($1,000). The person's privilege to operate a motor vehicle shall be suspended by the Department of Motor Vehicles pursuant to paragraph (3) of subdivision (a) of Section 13352.

23542. If the court grants probation to any person punished under Section 23540, in addition to the provisions of Section 23600 and any other terms and conditions imposed by the court, the court shall impose as conditions of probation that the person be subject to either subdivision (a) or (b), as follows:

(a) Be confined in the county jail for at least 10 days but not more than one year, and pay a fine of at least three hundred ninety dollars ($390) but not more than one thousand dollars ($1,000). The person's privilege to operate a motor vehicle shall be suspended by the Department of Motor Vehicles pursuant to paragraph (3) of subdivision (a) of Section 13352.

(b) All of the following:

(1) Be confined in the county jail for at least 48 hours but not more than one year.

(2) Pay a fine of at least three hundred ninety dollars ($390) but not more than one thousand dollars ($1,000).

(3) If the person gives proof of financial responsibility, as defined in Section 16430, to the Department of Motor Vehicles, have the privilege to operate a motor vehicle be restricted by the Department of Motor Vehicles pursuant to Section 13352.5, for the duration of the treatment program prescribed in paragraph (4), to necessary travel to and from that person's place of employment and to and from the applicable treatment program described in paragraph (4). If driving a motor vehicle is necessary to perform the duties of the person's employment, the restriction also shall allow the person to drive in that person's scope of employment.

Except as is specified in subparagraph (B) of paragraph (4), if the person gives proof of financial responsibility to the Department of Motor Vehicles, the Department of Motor Vehicles shall not suspend the person's privilege to operate a motor vehicle under Section 13352, as provided in Section 23540, unless the offense occurred in a vehicle requiring a driver with a class A or class B driver's license or with an endorsement prescribed in Section 15278.

(4) Either of the following:

(A) Enroll and participate, for at least 18 months subsequent to the date of the underlying violation 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. The person shall complete the entire program subsequent to, and shall not be given any credit for program activities completed prior to, the date of the current violation. The program shall provide for persons who cannot afford the program fee pursuant to paragraph (2) of subdivision (b) of Section 11837.4 of the Health and Safety Code in order to enable those persons to participate.

(B) Enroll and participate, for at least 30 months subsequent to the date of the underlying violation 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. The person shall complete the entire program subsequent to, and shall not be given any credit for program activities completed prior to, the date of the current violation. A person ordered to treatment pursuant to this subparagraph shall apply to the court or to a board of review, as designated by the court, at the conclusion of the program to obtain the court's order of satisfaction. Only upon the granting of that order of satisfaction by the court may the program issue its certificate of successful completion and report the completion to the Department of Motor Vehicles. A failure to obtain an order of satisfaction at the conclusion of the program is a violation of probation. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code. No condition of probation required pursuant to this subparagraph is a basis for reducing any other probation requirement or for avoiding the mandatory license revocation provisions of paragraph (5) of subdivision (a) of Section 13352.

23544. Notwithstanding Section 23602, if any person has been granted probation under the conditions of subdivision (b) of Section 23542 and fails at any time to participate successfully in the treatment program described in paragraph (4) of that subdivision, the court shall revoke or terminate the probation, and the court may revoke or terminate the probation if the person failed to comply with any other term or condition of probation, and the court shall proceed under either of the following provisions:

(a) Revoke suspension of sentence and proceed as provided in subdivision (c) of Section 1203.2 of the Penal Code and order the Department of Motor Vehicles to suspend the person's privilege to operate a motor vehicle pursuant to paragraph (3) of subdivision (a) of Section 13352 from the date of the order revoking or terminating probation.

(b) Grant a new term of probation on the condition that the person be confined in the county jail for at least 30 days and order the Department of Motor Vehicles to suspend the person's privilege to operate a motor vehicle pursuant to paragraph (3) of subdivision (a) of Section 13352 from the date of the new grant of probation.

23546. (a) If any person is convicted of a violation of Section 23152 and the offense occurred within seven years of two separate violations of Section 23103, as specified in Section 23103.5, which occurred on or after January 1, 1982, 23152, or 23153, or any combination thereof, which resulted in convictions, that person shall be punished by imprisonment in the county jail for not less than 120 days nor more than one year and by a fine of not less than three hundred ninety dollars ($390) nor more than one thousand dollars ($1,000). The person's privilege to operate a motor vehicle shall be revoked as required in paragraph (5) of subdivision (a) of Section

13352. The court shall require the person to surrender his or her driver's license to the court in accordance with Section 13550.

(b) Any person convicted of a violation of Section 23152 punishable under this section shall be designated as an habitual traffic offender for a period of three years, subsequent to the conviction. The person shall be advised of this designation pursuant to Section 23522 or 23590.

23548. (a) If the court grants probation to any person punished under Section 23546, in addition to the provisions of Section 23600 and any other terms and conditions imposed by the court, the court shall impose as conditions of probation that the person be confined in the county jail for at least 120 days but not more than one year and pay a fine of at least three hundred ninety dollars ($390) but not more than one thousand dollars ($1,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (5) of subdivision (a) of Section 13352.

(b) In addition to subdivision (a), if the court grants probation to any person punished under Section 23546, the court may order as a condition of probation that the person participate, for at least 30 months subsequent to the underlying conviction and in a manner satisfactory to the court, in a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code. In lieu of the minimum term of imprisonment specified in subdivision (a), the court shall impose as a condition of probation under this subdivision that the person be confined in the county jail for at least 30 days but not more than one year. The court shall not order the treatment prescribed by this subdivision unless the person makes a specific request and shows good cause for the order, whether or not the person has previously completed a treatment program pursuant to paragraph (4) of subdivision (b) of Section 23542 or paragraph (4) of subdivision (b) of Section 23562. A person ordered to treatment pursuant to this subdivision shall apply to the court or to a board of review, as designated by the court, at the conclusion of the program to obtain the court's order of satisfaction. Only upon the granting of that order of satisfaction by the court may the program issue its certificate of successful completion and report the completion to the Department of Motor Vehicles. A failure to obtain an order of satisfaction at the conclusion of the program is a violation of probation. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code. No condition of probation required pursuant to this subdivision is a basis for reducing any other probation requirement in this section or Section 23600 or for avoiding the mandatory license revocation provisions of paragraph (5) of subdivision (a) of Section 13352.

(c) In addition to the provisions of Section 23600 and subdivision (a), if the court grants probation to any person punished under Section 23546 who has not previously completed a treatment program pursuant to paragraph (4) of subdivision (b) of Section 23542 or paragraph (4) of subdivision (b) of Section 23562, and unless the person is ordered to participate in and complete a program under subdivision (b), the court shall impose as a condition of probation that the person, subsequent to the date of the current violation, enroll and participate, for at least 18 months 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. The person shall complete the entire program subsequent to, and shall not be given any credit for program activities completed prior to, the date of the current violation. Any person who has previously completed a 12-month or 18-month program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code shall not be eligible for referral pursuant to this subdivision unless a 30-month licensed program is not available for referral in the county of the person's residence or employment. The program shall provide for persons who cannot afford the program fee pursuant to paragraph (2) of subdivision (b) of Section 11837.4 of the Health and Safety Code in order to enable those persons to participate. No condition of probation required pursuant to this subdivision is a basis for reducing any other probation requirement in this section or Section 23600 or for avoiding the mandatory license revocation provisions of paragraph (5) of subdivision (a) of Section 13352.

23550. (a) If any person is convicted of a violation of Section 23152 and the offense occurred within seven years of three or more separate violations of Section 23103, as specified in Section 23103.5, or Section 23152 or 23153, or any combination thereof, which resulted in convictions, that person shall be punished by imprisonment in the state prison, or in a county jail for not less than 180 days nor more than one year, and by a fine of not less than three hundred ninety dollars ($390) nor more than one thousand dollars ($1,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (7) of subdivision (a) of Section 13352.

(b) Any person convicted of a violation of Section 23152 punishable under this section shall be designated as an habitual traffic offender for a period of three years, subsequent to the conviction. The person shall be advised of this designation pursuant to Section 23522 or 23590.

23550.5. (a) A person is guilty of a public offense, punishable by imprisonment in the state prison or in a county jail for not more than one year and by a fine of not less than three hundred ninety dollars ($390) nor more than one thousand dollars ($1,000) if that person is

convicted of a violation of Section 23152 or 23153, and the offense occurred within 10 years of any of the following:

(1) A prior violation of Section 23152 that was punished as a felony under Section 23550 or this section, or both.

(2) A prior violation of Section 23153 that was punished as a felony.

(3) A prior violation that was punished as a felony under Section 191.5 of, or paragraph (1) or (3) of subdivision (c) of Section 192 of, the Penal Code. The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles under paragraph (7) of subdivision (a) of Section 13352.

(b) Any person convicted of a violation of Section 23152 that is punishable under this section shall be designated an habitual traffic offender for a period of three years, subsequent to the conviction. The person shall be advised of this designation under Section 23522 or 23550.

23552. (a) If the court grants probation to any person punished under Section 23550 or 23550.5, in addition to the provisions of Section 23600 and any other terms and conditions imposed by the court, the court shall impose as conditions of probation that the person be confined in a county jail for at least 180 days but not more than one year and pay a fine of at least three hundred ninety dollars ($390) but not more than one thousand dollars ($1,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (7) of subdivision (a) of Section 13352.

(b) In addition to subdivision (a), if the court grants probation to any person punished under Section 23550, the court may order as a condition of probation that the person participate, for at least 30 months subsequent to the underlying conviction and in a manner satisfactory to the court, in a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code. In lieu of the minimum term of imprisonment in subdivision (a), the court shall impose as a condition of probation under this subdivision that the person be confined in the county jail for at least 30 days but not more than one year. The court shall not order the treatment prescribed by this subdivision unless the person makes a specific request and shows good cause for the order, whether or not the person has previously completed a treatment program pursuant to paragraph (4) of subdivision (b) of Section 23542 or paragraph (4) of subdivision (b) of Section 23562. A person ordered to treatment pursuant to this subdivision shall apply to the court or to a board of review, as designated by the court, at the conclusion of the program to obtain the court's order of satisfaction. Only upon the granting of that order of satisfaction by the court may the program issue its certificate of successful completion and report the completion to the Department of Motor Vehicles. A failure to obtain an order of satisfaction at the conclusion of the program is a violation of probation. In order to enable all required persons to

participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code. No condition of probation required pursuant to this subdivision is a basis for reducing any other probation requirement in this section or Section 23600 or for avoiding the mandatory license revocation provisions of paragraph (7) of subdivision (a) of Section 13352.

(c) In addition to the provisions of Section 23600 and subdivision (a), if the court grants probation to any person punished under Section 23550 who has not previously completed a treatment program pursuant to paragraph (4) of subdivision (b) of Section 23542 or paragraph (4) of subdivision (b) of Section 23562, and unless the person is ordered to participate in, and complete, a program under subdivision (b), the court shall impose as a condition of probation that the person, subsequent to the date of the current violation, enroll in and participate, for at least 18 months 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. The person shall complete the entire program subsequent to, and shall not be given any credit for program activities completed prior to, the date of the current violation. Any person who has previously completed a 12-month or 18-month program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code shall not be eligible for referral pursuant to this subdivision unless a 30-month licensed program is not available for referral in the county of the person's residence or employment. No condition of probation required pursuant to this subdivision is a basis for reducing any other probation requirement in this section or Section 23600 or for avoiding the mandatory license revocation provisions of paragraph (7) of subdivision (a) of Section 13352.

Article 3. Penalties for a Violation of Section 23153

23554. If any person is convicted of a first violation of Section 23153, that person shall be punished by imprisonment in the state prison, or in a county jail for not less than 90 days nor more than one year, and by a fine of not less than three hundred ninety dollars ($390) nor more than one thousand dollars ($1,000). The person's privilege to operate a motor vehicle shall be suspended by the Department of Motor Vehicles pursuant to paragraph (2) of subdivision (a) of Section 13352.

23556. (a) If the court grants probation to any person punished under Section 23554, in addition to the provisions of Section 23600 and any other terms and conditions imposed by the court, the court shall impose as a condition of probation that the person be confined in the county jail for at least five days but not more than one year and pay a fine of at least three hundred ninety dollars ($390) but not more

than one thousand dollars ($1,000). The person's privilege to operate a motor vehicle shall be suspended by the Department of Motor Vehicles pursuant to paragraph (2) of subdivision (a) of Section 13352.

(b) (1) In any county where the county alcohol program administrator has certified, and the board of supervisors has approved, such a program or programs, the court shall also impose as a condition of probation that the driver shall participate in, and successfully complete, an alcohol and other drug education and counseling program, established pursuant to Section 11837.3 of the Health and Safety Code, as designated by the court.

(2) In any county where the board of supervisors has approved and the State Department of Alcohol and Drug Programs has licensed an alcohol and other drug education and counseling program, the court shall also impose as a condition of probation that the driver enroll in, participate in, and successfully complete, an alcohol and other drug education and counseling program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, in the driver's county of residence or employment, as designated by the court.

(c) (1) The court shall revoke the person's probation pursuant to Section 23602, except for good cause shown, for the failure to enroll in, participate in, or complete a program specified in subdivision (b).

(2) The court, in establishing reporting requirements, shall consult with the county alcohol program administrator. The county alcohol program administrator shall coordinate the reporting requirements with the department and with the Department of Alcohol and Drug Programs. That reporting shall ensure that all persons who, after being ordered to attend and complete a program, may be identified for either (A) failure to enroll in, or failure to successfully complete, the program, or (B) successful completion of the program as ordered.

23558. Any person who proximately causes bodily injury or death to more than one victim in any one instance of driving in violation of Section 23153 of this code or in violation of Section 191.5 of, or paragraph (3) of subdivision (c) of Section 192 of, the Penal Code, shall, upon a felony conviction, receive an enhancement of one year in the state prison for each additional injured victim. The enhanced sentence provided for in this section shall not be imposed unless the fact of the bodily injury to each additional victim is charged in the accusatory pleading and admitted or found to be true by the trier of fact. The maximum number of one year enhancements which may be imposed pursuant to this section is three.

Notwithstanding any other provision of law, the court may strike the enhancements provided in this section if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

23560. If any person is convicted of a violation of Section 23153 and the offense occurred within seven years of a separate violation of Section 23103, as specified in Section 23103.5, 23152, or 23153 which resulted in a conviction, that person shall be punished by imprisonment in the state prison, or in a county jail for not less than 120 days nor more than one year, and by a fine of not less than three hundred ninety dollars ($390) nor more than five thousand dollars ($5,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (4) of subdivision (a) of Section 13352.

23562. If the court grants probation to any person punished under Section 23560, in addition to the provisions of Section 23600 and any other terms and conditions imposed by the court, the court shall impose as conditions of probation that the person be subject to the provisions of either subdivision (a) or (b), as follows:

(a) Be confined in the county jail for at least 120 days and pay a fine of at least three hundred ninety dollars ($390), but not more than five thousand dollars ($5,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (4) of subdivision (a) of Section 13352.

(b) All of the following:

(1) Be confined in the county jail for at least 30 days, but not more than one year.

(2) Pay a fine of at least three hundred ninety dollars ($390), but not more than one thousand dollars ($1,000).

(3) Pursuant to Section 13352.5, have the privilege to operate a motor vehicle be suspended for one year by the Department of Motor Vehicles and, after that one-year period, if the person gives proof of financial responsibility, as defined in Section 16430 to the Department of Motor Vehicles, have the privilege restricted by the Department of Motor Vehicles for two additional years to necessary travel to and from that person's place of employment, and to and from the treatment program described in paragraph (4). If driving a motor vehicle is necessary to perform the duties of the person's employment, the restriction also shall allow the person to drive in that person's scope of employment. The Department of Motor Vehicles shall not revoke the person's privilege to operate a motor vehicle under Section 13352, as provided in Section 13352.5, unless the offense occurred in a vehicle requiring a driver with a class A or class B driver's license, or with an endorsement specified in Section 15278.

(4) Either of the following:

(A) Enroll in and participate, for at least 18 months subsequent to the date of the underlying violation 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, if available in the county of the person's residence or employment, as designated by the court. The person shall complete

the entire program subsequent to, and shall not be given any credit for program activities completed prior to, the date of the current violation. The program shall provide for persons who cannot afford the program fee pursuant to paragraph (2) of subdivision (b) of Section 11837.4 of the Health and Safety Code in order to enable those persons to participate.

(B) Enroll in and participate, for at least 30 months subsequent to the date of the underlying violation 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, if available in the county of the person's residence or employment. The person shall complete the entire program subsequent to, and shall not be given any credit for program activities completed prior to, the date of the current violation. A person ordered to treatment pursuant to this subparagraph 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 completion and report the completion to the Department of Motor Vehicles. A failure to obtain an order of satisfaction at the conclusion of the program is a violation of probation. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code. No condition of probation required pursuant to this subparagraph is a basis for reducing any other probation requirement or for avoiding the mandatory license revocation provisions of paragraph (5) of subdivision (a) of Section 13352.

23564. Notwithstanding Section 23602, if any person has been granted probation under the conditions of subdivision (b) of Section 23562 and fails at any time to participate successfully in the treatment program described in paragraph (4) of that subdivision, the court shall revoke or terminate the probation, and the court may revoke or terminate the probation if the person failed to comply with any other term or condition of probation, and the court shall proceed under either of the following provisions:

(a) Revoke the suspension of sentence and proceed as provided in subdivision (c) of Section 1203.2 of the Penal Code and order the Department of Motor Vehicles to revoke the person's privilege to operate a motor vehicle pursuant to paragraph (4) of subdivision (a) of Section 13352 from the date of the order revoking or terminating probation.

(b) Grant a new term of probation on the condition that the person be confined in the county jail for at least 90 days and order the Department of Motor Vehicles to suspend the person's privilege to operate a motor vehicle pursuant to paragraph (4) of subdivision (a) of Section 13352 from the date of the new grant of probation.

23566. (a) If any person is convicted of a violation of Section 23153 and the offense occurred within seven years of two or more separate violations of Section 23103, as specified in Section 23103.5, or Section 23152 or 23153, or any combination of these violations, which resulted in convictions, that person shall be punished by imprisonment in the state prison for a term of two, three, or four years and by a fine of not less than one thousand fifteen dollars ($1,015) nor more than five thousand dollars ($5,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (6) of subdivision (a) of Section 13352.

(b) If any person is convicted of a violation of Section 23153, and the act or neglect proximately causes great bodily injury, as defined in Section 12022.7 of the Penal Code, to any person other than the driver, and the offense occurred within seven years of two or more separate violations of Section 23103, as specified in Section 23103.5, or Section 23152 or 23153, or any combination of these violations, which resulted in convictions, that person shall be punished by imprisonment in the state prison for a term of two, three, or four years and by a fine of not less than one thousand fifteen dollars ($1,015) nor more than five thousand dollars ($5,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (6) of subdivision (a) of Section 13352.

(c) If any person is convicted under subdivision (b), and the offense for which the person is convicted occurred within seven years of four or more separate violations of Section 23103, as specified in Section 23103.5, or Section 23152 or 23153, or any combination of these violations, that resulted in convictions, that person shall, in addition and consecutive to the sentences imposed under subdivision (b), be punished by an additional term of imprisonment in the state prison for three years.

The enhancement allegation provided in this subdivision shall be pleaded and proved as provided by law.

(d) Any person convicted of Section 23153 punishable under this section shall be designated as an habitual traffic offender for a period of three years, subsequent to the conviction. The person shall be advised of this designation pursuant to Section 23522 or 23590.

(e) Any person confined in state prison under this section shall be ordered by the court to participate in an alcohol or drug program, or both, that is available at the prison during the person's confinement. Completion of an alcohol or drug program under this section does not meet the program completion requirement of paragraph (6) of subdivision (a) of Section 13352, unless the drug or alcohol program is licensed under Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, or is a program specified in Section 8001 of the Penal Code.

23568. (a) If the court grants probation to any person punished under Section 23566, in addition to the provisions of Section 23600 and any other terms and conditions imposed by the court, the court shall impose as conditions of probation that the person be confined in the county jail for at least one year, that the person pay a fine of at least three hundred ninety dollars ($390) but not more than five thousand dollars ($5,000), and that the person make restitution or reparation pursuant to Section 1203.1 of the Penal Code. The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (6) of subdivision (a) of Section 13352.

(b) In addition to the provisions of Section 23600 and subdivision (a), if the court grants probation to any person punished under Section 23566, the court shall impose as a condition of probation that the person enroll in and complete, subsequent to the date of the underlying violation and in a manner satisfactory to the court, an 18-month program or, if available in the county of the person's residence or employment, a 30-month 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. The person shall complete the entire program subsequent to, and shall not be given any credit for program activities completed prior to, the date of the current violation. In lieu of the minimum term of imprisonment in subdivision (a), the court shall impose as a minimum condition of probation under this subdivision that the person be confined in the county jail for at least 30 days but not more than one year. Except as provided in subdivision (a), if the court grants probation under this section, the court shall order the treatment prescribed by this subdivision, whether or not the person has previously completed a treatment program pursuant to paragraph (4) of subdivision (b) of Section 23542 or paragraph (4) of subdivision (b) of Section 23562. A person ordered to treatment pursuant to this subdivision shall apply to the court or to a board of review, as designated by the court, at the conclusion of the program to obtain the court's order of satisfaction. Only upon the granting of that order of satisfaction by the court may the program issue its certificate of successful completion and report the completion to the Department of Motor Vehicles. A failure to obtain an order of satisfaction at the conclusion of the program is a violation of probation. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code. No condition of probation required pursuant to this subdivision is a basis for reducing any other probation requirement in this section or Section 23600 or for avoiding the mandatory license revocation provisions of paragraph (6) of subdivision (a) of Section 13352.

Article 4. Additional Punishments

23572. (a) If any person is convicted of a violation of Section 23152 and a minor under 14 years of age was a passenger in the vehicle at the time of the offense, the court shall impose the following penalties in addition to any other penalty prescribed in this article:

(1) If the person is convicted of a violation of Section 23152 punishable under Section 23536, the punishment prescribed in this article shall be enhanced by an imprisonment of 48 continuous hours in the county jail, whether or not probation is granted, no part of which shall be stayed.

(2) If a person is convicted of a violation of Section 23152 punishable under Section 23540, the punishment prescribed in this article shall be enhanced by an imprisonment of 10 days in the county jail, whether or not probation is granted, no part of which may be stayed.

(3) If a person is convicted of a violation of Section 23152 punishable under Section 23546, the punishment prescribed in this article shall be enhanced by an imprisonment of 30 days in the county jail, whether or not probation is granted, no part of which may be stayed.

(4) If a person is convicted of a violation of Section 23152 which is punished as a misdemeanor under Section 23550, the punishment prescribed in this article shall be enhanced by an imprisonment of 90 days in the county jail, whether or not probation is granted, no part of which may be stayed.

(b) The driving of a vehicle in which a minor under 14 years of age was a passenger shall be pled and proven.

(c) No punishment enhancement shall be imposed pursuant to this section if the person is also convicted of a violation of Section 273a of the Penal Code arising out of the same facts and incident.

Article 5. Additional Penalties and Sanctions

23575. (a) In addition to any other provisions of law, the court may prohibit any person who is convicted of a first offense violation of Section 23152 or 23153 from operating a motor vehicle unless that vehicle is equipped with a functioning, certified ignition interlock device.

(1) Notwithstanding any other provision of law, if any person is convicted of a violation of Section 23152 or 23153, and the offense occurred within seven years of a separate violation of Section 23152 or 23153 which resulted in a conviction, the court shall, subject to this article, prohibit the person from operating a motor vehicle unless that vehicle is equipped with a functioning ignition interlock device, certified pursuant to Section 13386, unless the court finds that to do so would not be in the interest of justice, as prescribed by the rules

adopted pursuant to subdivision (c), and enters the grounds for its finding on the record.

(2) Nothing in this section permits a person to drive without a valid driver's license. The court shall advise the person that installation of an ignition interlock device on a vehicle does not allow the person to drive without a valid driver's license.

(b) The court shall order the installation of an ignition interlock device on any vehicle that a person subject to subdivision (a) owns or operates. The court shall determine which owned or operated vehicles shall be subject to the installation order and may order that the person shall not operate a vehicle that is owned by the person, thereby permitting the court to exempt that vehicle from the installation order. The court shall order the device to remain installed on the vehicle for a period of one to three years following the restoration of the person's driving privileges. The court shall make a determination as to whether the person has the ability to pay for the ignition interlock device and, if the person claims inability to pay for the installation, the court shall determine the person's ability to pay in accordance with subdivision (b) of Section 1203.1b of the Penal Code. If the court determines that the person is unable to pay, the court may order a payment plan. The plan may defer payment over a period that exceeds the period of the court's ignition interlock device installation order. The person shall pay the manufacturer of the ignition interlock device, or the manufacturer's agent, directly for the cost of the device and its installation, in accordance with any payment schedule ordered by the court. If the court determines that there is no feasible way for the person to pay for the device, or if the manufacturer declines the person's application for a payment plan, or if the court exempts the person in the interest of justice in accordance with paragraph (1) of subdivision (a), the court shall not order an ignition interlock device installed, but may order the defendant to perform an appropriate amount of community service.

(c) The Judicial Council shall adopt rules for exemptions granted pursuant to paragraph (1) of subdivision (a) on or before January 1, 1995. Those rules shall further the goal of installing an ignition interlock device in as many cases as possible. The Judicial Council shall authorize exemptions under all of the following circumstances:

(1) The defendant is an out-of-state resident.

(2) The defendant's residence is located 50 miles or more from, or it is necessary for the defendant to drive at least two hours to arrive at, the nearest ignition interlock installation or service facility.

(3) If the defendant is the sole proprietor of a business which requires two or more vehicles to be registered in his or her name and the court determines that a single vehicle is the defendant's primary vehicle, the court may order the installation of the ignition interlock device on that one vehicle only.

(4) The defendant's prior driving conviction occurred six years and nine months or more prior to the date of the offense for which

he or she is being sentenced and the defendant shows proof to the court of enrollment in an alcohol rehabilitation program.

(5) The defendant provides proof to the court that the vehicle, which is registered in the defendant's name, is inoperable and the defendant is unable to comply with the requirements relating to the transfer of title of the vehicle.

(d) The court shall require the person to provide proof of installation to the court or the probation officer within 30 days of the conviction, or within 30 days of the person's release from county jail, state prison, or a locked residential treatment program, on a form prescribed pursuant to Section 13386. If the driving privilege of the person is not also suspended or revoked, the court shall require the person to surrender his or her driver's license to the court until that proof is submitted and verified by the court or probation officer. If the person fails to provide proof of installation within that period, absent a finding by the court of good cause for that failure which is entered in the court record, the court shall notify the Department of Motor Vehicles, which shall revoke the person's driving privilege for a period of one year. The period of revocation for failure to provide proof of installation shall be added to any previously ordered suspension or revocation.

(e) A person whose driving privilege is restored prior to the end of the period ordered in subdivision (b), may petition the court to review whether it is necessary to continue the ignition interlock order.

(f) A person whose driving privilege is restricted pursuant to this section shall arrange for each vehicle with an ignition interlock device to be serviced by the installer at least once every 60 days in order for the installer to recalibrate the device and monitor the operation of the device. The installer shall notify the court or probation officer if the person fails to return for recalibration or if the device indicates that the person has attempted to bypass or tamper with the device or has attempted to start the vehicle while intoxicated. Unless so ordered by the court, there shall be no obligation on the part of the installer to notify the court or probation officer if the person has complied with all of the requirements of this article.

(g) The court shall immediately suspend the privilege to operate a motor vehicle of, and issue a bench warrant for, any person who fails to comply with any notice from the court or probation officer to comply with the installation period ordered pursuant to subdivision (b) or with the notification requirement of subdivision (f), or who three or more times fails to comply with any requirement for the maintenance or calibration of the ignition interlock device.

(h) The court shall include on the abstract of conviction or violation or report submitted to the Department of Motor Vehicles under Section 1803 or 1816, the requirement for, and the period of, the use of a certified ignition interlock device under this section. The

records of the Department of Motor Vehicles shall reflect mandatory use of the device.

(i) If a person has a medical problem that does not permit the person to breathe with sufficient strength to activate the device, and provides the court with a physician's report that documents this condition to the satisfaction of the court, the court shall not order an ignition interlock device installed but may order the defendant to perform an appropriate amount of community service. The court may delay the installation of the device if the physician's report indicates that the person's condition may improve sufficiently to permit use of the device. The court shall enter on the record that it has granted a permanent or temporary medical exception as documented by a physician and surgeon's report.

(j) The owner of a vehicle that has an ignition interlock device installed shall notify the court of a pending sale of the vehicle prior to transfer of the vehicle to the new owner. The court shall determine whether there is a replacement vehicle and shall order installation of the ignition interlock device in the replacement vehicle for the duration of the sentence. If the court determines that there is no replacement vehicle, the court may suspend the restriction or order the person to perform an appropriate amount of community service. The Department of Motor Vehicles shall crossmatch, on a weekly basis, driver's license records of persons who have violated either Section 23152 or 23153 with records of those persons applying for a change of ownership or transfer of title and report any matched records to the appropriate court.

(k) This article does not restrict a court from requiring installation of an ignition interlock device for any persons to whom subdivision (a) does not apply.

(*l*) For the purposes of this section, "vehicle" does not include a motorcycle until the state certifies an ignition interlock device that can be installed on a motorcycle. However, a court shall order a person subject to this section not to operate a motorcycle for the duration of the ignition interlock order.

(m) For purposes of this section, the following definitions shall apply:

(1) "Owned" means solely owned or owned in conjunction with another person or legal entity.

(2) "Operates" includes operating vehicles that are not owned by the person subject to this section.

23576. (a) Notwithstanding Section 23575, if a person is required to operate a motor vehicle in the course and scope of his or her employment and if the vehicle is owned by the employer, the person may operate that vehicle without installation of an approved ignition interlock device if the employer has been notified by the person that the person's driving privilege has been restricted pursuant to Section 23575 and if the person has proof of that notification in his or her

possession, or if the notice, or a facsimile copy thereof, is with the vehicle.

(b) A motor vehicle owned by a business entity that is all or partly owned or controlled by a person otherwise subject to Section 23575, is not a motor vehicle owned by the employer subject to the exemption in subdivision (a).

23577. (a) If any person is convicted of a violation of Section 23152 or 23153, and at the time of the arrest leading to that conviction that person willfully refused a peace officer's request to submit to, or willfully failed to complete, the chemical test or tests pursuant to Section 23612, the court shall impose the following penalties:

(1) If the person is convicted of a first violation of Section 23152, notwithstanding any other provision of subdivision (a) of Section 23538, the terms and conditions of probation shall include the conditions in paragraph (1) of subdivision (a) of Section 23538.

(2) If the person is convicted of a first violation of Section 23153, the punishment prescribed in this article shall be enhanced by an imprisonment of 48 continuous hours in the county jail, whether or not probation is granted and no part of which may be stayed, unless the person is sentenced to, and incarcerated in, the state prison and the execution of that sentence is not stayed.

(3) If the person is convicted of a second violation of Section 23152, punishable under Section 23540, or a second violation of Section 23153, punishable under Section 23560, the punishment prescribed in this article shall be enhanced by an imprisonment of 96 hours in the county jail, whether or not probation is granted and no part of which may be stayed, unless the person is sentenced to, and incarcerated in, the state prison and execution of that sentence is not stayed.

(4) If the person is convicted of a third violation of Section 23152, punishable under Section 23546, the punishment prescribed in this article shall be enhanced by an imprisonment of 10 days in the county jail, whether or not probation is granted and no part of which may be stayed.

(5) If the person is convicted of a fourth or subsequent violation of Section 23152, punishable under Section 23550 or 23550.5, the punishment prescribed in this article shall be enhanced by imprisonment of 18 days in the county jail, whether or not probation is granted and no part of which may be stayed.

(b) The willful refusal or failure to complete the chemical test required pursuant to Section 23612 shall be pled and proven.

23578. In addition to any other provision of this code, if any person is convicted of a violation of Section 23152 or 23153, the court shall consider a concentration of alcohol in the person's blood of 0.20 percent or more, by weight, or the refusal of the person to take a chemical test as a special factor which may justify enhancing the penalties in sentencing, in determining whether to grant probation, and, if probation is granted, in determining additional or enhanced terms and conditions of probation.

23580. (a) If any person is convicted of a violation of Section 23152 or 23153 and the offense was a second or subsequent offense punishable under Section 23540, 23546, 23550, 23550.5, 23560, or 23566, the court shall require that any term of imprisonment that is imposed include at least one period of not less than 48 consecutive hours of imprisonment or, in the alternative and notwithstanding Section 4024.2 of the Penal Code, that the person serve not less than 10 days of community service.

(b) Notwithstanding any other provision of law, except Section 2900.5 of the Penal Code, unless the court expressly finds in the circumstances that the punishment inflicted would be cruel or unusual punishment prohibited by Section 17 of Article I of the California Constitution, no court or person to whom a person is remanded for execution of sentence shall release, or permit the release of, a person from the requirements of subdivision (a), including, but not limited to, any work-release program, weekend service of sentence program, diversion or treatment program, or otherwise.

(c) For the purposes of this section, "imprisonment" means confinement in a jail, in a minimum security facility, or in an inpatient rehabilitation facility, as provided in Part 1309 (commencing with Section 1309.1) of Title 23 of the Code of Federal Regulations.

(d) This section shall become operative only if, and upon the date of the certification by, the Department of Motor Vehicles to the Secretary of State that California has submitted a completed application for federal Title 408 grant programs funds pursuant to that Part 1309.

23582. (a) Any person who drives a vehicle 30 or more miles per hour over the maximum, prima facie, or posted speed limit on a freeway, or 20 or more miles per hour over the maximum, prima facie, or posted speed limit on any other street or highway, and in a manner prohibited by Section 23103 during the commission of a violation of Section 23152 or 23153 shall, in addition to the punishment prescribed for that person upon conviction of a violation of Section 23152 or 23153, be punished by an additional and consecutive term of 60 days in the county jail.

(b) If the court grants probation or suspends the execution of sentence, it shall require as a condition of probation or suspension that the defendant serve 60 days in the county jail, in addition and consecutive to any other sentence prescribed by this chapter.

(c) On a first conviction under this section, the court shall order the driver to participate in, and successfully complete, an alcohol or drug education and counseling program, or both an alcohol and a drug education and counseling program. Except in unusual cases where the interests of justice would be served, a finding making this section applicable to a defendant shall not be stricken pursuant to Section 1385 of the Penal Code or any other provision of law. If the

court decides not to impose the additional and consecutive term, it shall specify on the court record the reasons for that order.

(d) The additional term provided in this section shall not be imposed unless the facts of driving in a manner prohibited by Section 23103 and driving the vehicle 30 or more miles per hour over the maximum, prima facie, or posted speed limit on a freeway, or 20 or more miles per hour over the maximum, prima facie, or posted speed limit on any other street or highway, are charged in the accusatory pleading and admitted or found to be true by the trier of fact. A finding of driving in that manner shall be based on facts in addition to the fact that the defendant was driving while under the influence of alcohol, any drug, or both, or with a specified percentage of alcohol in the blood.

Article 6. Additional Court-Imposed Orders and Directions

23590. If a person is convicted of a violation of Section 23152 punishable under Section 23546 , 23550, or 23550.5, or a violation of Section 23153 punishable under Section 23566, including a violation of paragraph (3) of subdivision (c) of Section 192 of the Penal Code as provided in Section 193.7 of that code, the court shall, at the time of surrender of the driver's license or temporary permit, require the defendant to sign an affidavit in a form provided by the department acknowledging his or her understanding of the revocation required by paragraph (5), (6), or (7) of subdivision (a) of Section 13352, and an acknowledgment of his or her designation as an habitual traffic offender. A copy of this affidavit shall be transmitted, with the license or temporary permit, to the department within the prescribed 10 days.

23592. (a) (1) Whenever a person is convicted of any of the following offenses committed while driving a motor vehicle of which he or she is the owner, the court, at the time sentence is imposed on the person, may order the motor vehicle impounded for a period of not more than six months for a first conviction, and not more than 12 months for a second or subsequent conviction:

(A) Driving with a suspended or revoked driver's license.

(B) A violation of Section 2800.2 resulting in an accident or Section 2800.3, if either violation occurred within seven years of one or more separate convictions for a violation of any of the following:

(i) Section 23103, if the vehicle involved in the violation was driven at a speed of 100 or more miles per hour.

(ii) Section 23152.

(iii) Section 23153.

(iv) Section 191.5 of the Penal Code.

(v) Subdivision (c) of Section 192 of the Penal Code.

(2) The cost of keeping the vehicle is a lien on the vehicle pursuant to Chapter 6.5 (commencing with Section 3067) of Title 14 of Part 4 of Division 3 of the Civil Code.

(b) Notwithstanding subdivision (a), any motor vehicle impounded pursuant to this section which is subject to a chattel mortgage, conditional sale contract, or lease contract shall be released by the court to the legal owner upon the filing of an affidavit by the legal owner that the chattel mortgage, conditional sale contract, or lease contract is in default and shall be delivered to the legal owner upon payment of the accrued cost of keeping the vehicle.

23594. (a) Except as provided in subdivision (b), the interest of any registered owner of a motor vehicle that has been used in the commission of a violation of Section 23152 or 23153 for which the owner was convicted, is subject to impoundment as provided in this section. Upon conviction, the court may order the vehicle impounded at the registered owner's expense for not less than one nor more than 30 days.

If the offense occurred within five years of a prior offense which resulted in conviction of a violation of Section 23152 or 23153, the prior conviction shall also be charged in the accusatory pleading and if admitted or found to be true by the jury upon a jury trial or by the court upon a court trial, the court shall, except in an unusual case where the interests of justice would best be served by not ordering impoundment, order the vehicle impounded at the registered owner's expense for not less than one nor more than 30 days.

If the offense occurred within five years of two or more prior offenses which resulted in convictions of violations of Section 23152 or 23153, the prior convictions shall also be charged in the accusatory pleading and if admitted or found to be true by the jury upon a jury trial or by the court upon a court trial, the court shall, except in an unusual case where the interests of justice would best be served by not ordering impoundment, order the vehicle impounded at the registered owner's expense for not less than one nor more than 90 days.

For the purposes of this section, the court may consider in the interests of justice factors such as whether impoundment of the vehicle would result in a loss of employment of the offender or the offender's family, impair the ability of the offender or the offender's family to attend school or obtain medical care, result in the loss of the vehicle because of inability to pay impoundment fees, or unfairly infringe upon community property rights or any other facts the court finds relevant. When no impoundment is ordered in an unusual case pursuant to this section, the court shall specify on the record and shall enter in the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(b) No vehicle which may be lawfully driven on the highway with a class C or class M driver's license, as specified in Section 12804.9, is subject to impoundment under this section if there is a community property interest in the vehicle owned by a person other than the defendant and the vehicle is the sole vehicle available to the

defendant's immediate family which may be operated on the highway with a class C or class M driver's license.

23596. (a) (1) Upon its own motion or upon motion of the prosecutor in a criminal action for a violation of any of the following offenses, the court with jurisdiction over the offense, notwithstanding Section 86 of the Code of Civil Procedure and any other provision of law otherwise prescribing the jurisdiction of the court based upon the value of the property involved, may declare the motor vehicle driven by the defendant to be a nuisance if the defendant is the registered owner of the vehicle:

(A) A violation of Section 191.5 of, or paragraph (3) of subdivision (c) of Section 192 of, the Penal Code.

(B) A violation of Section 23152 which occurred within seven years of two or more separate offenses of Section 191.5 of, or paragraph (3) of subdivision (c) of Section 192 of, the Penal Code, or Section 23152 or 23153, or any combination thereof, which resulted in convictions.

(C) A violation of Section 23153 which occurred within seven years of one or more separate offenses of Section 191.5 of, or paragraph (3) of subdivision (c) of Section 192 of, the Penal Code, or Section 23152 or 23153, which resulted in convictions.

(2) The court or the prosecutor shall give notice of the motion to the defendant, and the court shall hold a hearing before a motor vehicle may be declared a nuisance under this section.

(b) Except as provided in subdivision (g), upon the conviction of the defendant and at the time of pronouncement of sentence, the court with jurisdiction over the offense shall order any vehicle declared to be a nuisance pursuant to subdivision (a) to be sold. Any vehicle ordered to be sold pursuant to this subdivision shall be surrendered to the sheriff of the county or the chief of police of the city in which the violation occurred. The officer to whom the vehicle is surrendered shall promptly ascertain from the department the names and addresses of all legal and registered owners of the vehicle and, within five days of receiving that information, shall send by certified mail a notice to all legal and registered owners of the vehicle other than the defendant, at the addresses obtained from the department, informing them that the vehicle has been declared a nuisance and will be sold or otherwise disposed of pursuant to this section and of the approximate date and location of the sale or other disposition. The notice shall also inform any legal owner of its right to conduct the sale pursuant to subdivision (c).

(c) Any legal owner which in the regular course of its business conducts sales of repossessed or surrendered motor vehicles may take possession and conduct the sale of the vehicle declared to be a nuisance if it notifies the officer to whom the vehicle is surrendered of its intent to conduct the sale within 15 days of the mailing of the notice pursuant to subdivision (b). Sale of the vehicle pursuant to this subdivision may be conducted at the time, in the manner, and on the

notice usually given by the legal owner for the sale of repossessed or surrendered vehicles. The proceeds of any sale conducted by the legal owner shall be disposed of as provided in subdivision (e).

(d) If the legal owner does not notify the officer to whom the vehicle is surrendered of its intent to conduct the sale as provided in subdivision (c), the officer shall offer the vehicle for sale at public auction within 60 days of receiving the vehicle. At least 10 days but not more than 20 days prior to the sale, not counting the day of the sale, the officer shall give notice of the sale by advertising once in a newspaper of general circulation published in the city or county, as the case may be, in which the vehicle is located, which notice shall contain a description of the make, year, model, identification number, and license number of the vehicle and the date, time, and location of the sale. For motorcycles, the engine number shall also be included. If there is no newspaper of general circulation published in the county, notice shall be given by posting a notice of sale containing the information required by this subdivision in three of the most public places in the city or county in which the vehicle is located, and at the place where the vehicle is to be sold, for 10 consecutive days prior to and including the day of the sale.

(e) The proceeds of a sale conducted pursuant to this section shall be disposed of in the following priority:

(1) To satisfy the costs of the sale, including costs incurred with respect to the taking and keeping of the vehicle pending sale.

(2) To the legal owner in an amount to satisfy the indebtedness owed to the legal owner remaining as of the date of the sale, including accrued interest or finance charges and delinquency charges.

(3) To the holder of any subordinate lien or encumbrance on the vehicle to satisfy any indebtedness so secured if written notification of demand is received before distribution of the proceeds is completed. The holder of a subordinate lien or encumbrance, if requested, shall reasonably furnish reasonable proof of its interest and, unless it does so on request, is not entitled to distribution pursuant to this paragraph.

(4) To any other person who can establish an interest in the vehicle, including a community property interest, to the extent of his or her provable interest.

(5) If the vehicle was forfeited as a result of a felony violation of Section 191.5 of the Penal Code, or of Section 23153 that resulted in serious bodily injury to any person other than the defendant, the balance, if any, to the city or county in which the violation occurred, to be deposited in its general fund.

(6) Except as provided in paragraph (5), the balance, if any, to the city or county in which the violation occurred, to be expended for community-based adolescent substance abuse treatment services.

The person conducting the sale shall disburse the proceeds of the sale as provided in this subdivision, and provide a written accounting

regarding the disposition to all persons entitled to or claiming a share of the proceeds, within 15 days after the sale is conducted.

(f) If the vehicle to be sold under this section is not of the type that can readily be sold to the public generally, the vehicle shall be destroyed or donated to an eleemosynary institution.

(g) No vehicle shall be sold pursuant to this section in either of the following circumstances:

(1) The vehicle is stolen, unless the identity of the legal and registered owners of the vehicle cannot be reasonably ascertained.

(2) The vehicle is owned by another, or there is a community property interest in the vehicle owned by a person other than the defendant and the vehicle is the only vehicle available to the defendant's immediate family that may be operated on the highway with a class 3 or class 4 driver's license.

(h) The Legislature finds and declares it to be the public policy of this state that no policy of insurance shall afford benefits that would alleviate the financial detriment suffered by any person as a direct or indirect result of a confiscation of a vehicle pursuant to this section.

Article 7. Alternative to Alcohol or Drug Education Program

23598. In lieu of the alcohol or drug education program prescribed by Section 23538, 23542, 23548, 23552, 23556, 23562, or 23568, a court may impose, as a condition of probation, that the person complete, subsequent to the underlying conviction, a program specified in Section 8001 of the Penal Code, if the person consents and has been accepted into that program. Acceptance into that program shall be verified by a certification, under penalty of perjury, by the director of the program.

CHAPTER 3. PROBATION

23600. (a) If any person is convicted of a violation of Section 23152 or 23153, the court shall not stay or suspend pronouncement of sentencing, and shall pronounce sentence in conjunction with the conviction in a reasonable time, including time for receipt of any presentence investigation report ordered pursuant to Section 23655.

(b) If any person is convicted of a violation of Section 23152 or 23153 and is granted probation, the terms and conditions of probation shall include, but not be limited to the following:

(1) Notwithstanding Section 1203a of the Penal Code, a period of probation not less than three nor more than five years; provided, however, that if the maximum sentence provided for the offense may exceed five years in the state prison, the period during which the sentence may be suspended and terms of probation enforced may be for a longer period than three years but may not exceed the maximum time for which sentence of imprisonment may be pronounced.

(2) A requirement that the person shall not drive a vehicle with any measurable amount of alcohol in his or her blood.

(3) A requirement that the person, if arrested for a violation of Section 23152 or 23153, shall not refuse to submit to a chemical test of his or her blood, breath, or urine, pursuant to Section 23612, for the purpose of determining the alcoholic content of his or her blood.

(4) A requirement that the person shall not commit any criminal offense.

(c) The court shall not absolve a person who is convicted of a violation of Section 23152 or 23153 from the obligation of spending the minimum time in confinement, if any, or of paying the minimum fine provided in this article.

(d) In addition to any other provision of law, if any person violates paragraph (2) or (3) of subdivision (b) and the person had a blood alcohol concentration of over 0.04 percent as determined by a chemical test, the court shall revoke or terminate the person's probation as provided by Section 23602, regardless of any other proceeding, and shall only grant a new term of probation of not more than five years on the added condition that the person be confined in the county jail for not less than 48 hours for each of these violations of probation, except in unusual cases where the interests of justice would best be served if this additional condition were not imposed.

23601. (a) Except as provided in subdivision (c), an order to pay any fine, restitution, or assessment, imposed as a condition of the grant of probation or as part of a judgment of conditional sentence for a violation of Section 23152 or 23153, may be enforced in the same manner provided for the enforcement of money judgments.

(b) A willful failure to pay any fine, restitution, or assessment during the term of probation is a violation of the terms and conditions of probation.

(c) If an order to pay a fine as a condition of probation is stayed, a writ of execution shall not be issued, and any failure to pay the fine is not willful, until the stay is removed.

23602. Except as otherwise expressly provided in this article, if a person has been convicted of a violation of Section 23152 or 23153 and the court has suspended execution of the sentence for that conviction and has granted probation, and during the time of that probation, the person is found by the court to have violated a term or condition of that probation required by any provision of this article, the court shall revoke the suspension of sentence, revoke or terminate probation, and shall proceed in the manner provided in subdivision (c) of Section 1203.2 of the Penal Code.

CHAPTER 4. PROCEDURES

Article 1. General Provisions

23610. (a) Upon the trial of any criminal action, or preliminary proceeding in a criminal action, arising out of acts alleged to have been committed by any person while driving a vehicle while under the influence of an alcoholic beverage in violation of subdivision (a) of Section 23152 or subdivision (a) of Section 23153, the amount of alcohol in the person's blood at the time of the test as shown by chemical analysis of that person's blood, breath, or urine shall give rise to the following presumptions affecting the burden of proof:

(1) If there was at that time less than 0.05 percent, by weight, of alcohol in the person's blood, it shall be presumed that the person was not under the influence of an alcoholic beverage at the time of the alleged offense.

(2) If there was at that time 0.05 percent or more but less than 0.08 percent, by weight, of alcohol in the person's blood, that fact shall not give rise to any presumption that the person was or was not under the influence of an alcoholic beverage, but the fact may be considered with other competent evidence in determining whether the person was under the influence of an alcoholic beverage at the time of the alleged offense.

(3) If there was at that time 0.08 percent or more, by weight, of alcohol in the person's blood, it shall be presumed that the person was under the influence of an alcoholic beverage at the time of the alleged offense.

(b) Percent, by weight, of alcohol in the person's blood shall be based upon grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(c) This section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question of whether the person ingested any alcoholic beverage or was under the influence of an alcoholic beverage at the time of the alleged offense.

23612. (a) (1) Any person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his or her blood, breath, or urine for the purpose of determining the alcoholic content of his or her blood, and to have given his or her consent to chemical testing of his or her blood or urine for the purpose of determining the drug content of his or her blood, if lawfully arrested for any offense allegedly committed in violation of Section 23140, 23152, or 23153. The testing shall be incidental to a lawful arrest and administered at the direction of a peace officer having reasonable cause to believe the person was driving a motor vehicle in violation of Section 23140, 23152, or 23153. The person shall be told that his or her failure to submit to, or the failure to complete, the required chemical testing will result in a fine, mandatory imprisonment if the person is convicted of a violation of Section 23152 or 23153, and (A)

the suspension of the person's privilege to operate a motor vehicle for a period of one year, (B) the revocation of the person's privilege to operate a motor vehicle for a period of two years if the refusal occurs within seven years of a separate violation of Section 23103, as specified in Section 23103.5, or of Section 23140, 23152, or 23153, or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code which resulted in a conviction, or if the person's privilege to operate a motor vehicle has been suspended or revoked pursuant to Section 13353, 13353.1, or 13353.2 for an offense which occurred on a separate occasion, or (C) the revocation of the person's privilege to operate a motor vehicle for a period of three years if the refusal occurs within seven years of two or more separate violations of Section 23103, as specified in Section 23103.5, or of Section 23140, 23152, or 23153, or of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, or any combination thereof, which resulted in convictions, or if the person's privilege to operate a motor vehicle has been suspended or revoked two or more times pursuant to Section 13353, 13353.1, or 13353.2 for offenses which occurred on separate occasions, or if there is any combination of those convictions or administrative suspensions or revocations.

(2) (A) If the person is lawfully arrested for driving under the influence of an alcoholic beverage, the person has the choice of whether the test shall be of his or her blood, breath, or urine, and the officer shall advise the person that he or she has that choice. If the person arrested either is incapable, or states that he or she is incapable, of completing any chosen test, the person shall submit to the person's choice of the remaining tests or test, and the officer shall advise the person that the person has that choice.

(B) If the person is lawfully arrested for driving under the influence of any drug or the combined influence of an alcoholic beverage and any drug, the person has the choice of whether the test shall be of his or her blood, breath, or urine, and the officer shall advise the person that he or she has that choice.

(C) A person who chooses to submit to a breath test may also be requested to submit to a blood or urine test if the officer has reasonable cause to believe that the person was driving under the influence of any drug or the combined influence of an alcoholic beverage and any drug and if the officer has a clear indication that a blood or urine test will reveal evidence of the person being under the influence. The officer shall state in his or her report the facts upon which that belief and that clear indication are based. The person has the choice of submitting to and completing a blood or urine test, and the officer shall advise the person that he or she is required to submit to an additional test and that he or she may choose a test of either blood or urine. If the person arrested either is incapable, or states that he or she is incapable, of completing either chosen test, the person shall submit to and complete the other remaining test.

(3) If the person is lawfully arrested for an offense allegedly committed in violation of Section 23140, 23152, or 23153, and, because of the need for medical treatment, the person is first transported to a medical facility where it is not feasible to administer a particular test of, or to obtain a particular sample of, the person's blood, breath, or urine, the person has the choice of those tests that are available at the facility to which that person has been transported. In that case, the officer shall advise the person of those tests that are available at the medical facility and that the person's choice is limited to those tests that are available.

(4) The officer shall also advise the person that he or she does not have the right to have an attorney present before stating whether he or she will submit to a test or tests, before deciding which test or tests to take, or during administration of the test or tests chosen, and that, in the event of refusal to submit to a test or tests, the refusal may be used against him or her in a court of law.

(5) Any person who is unconscious or otherwise in a condition rendering him or her incapable of refusal is deemed not to have withdrawn his or her consent and a test or tests may be administered whether or not the person is told that his or her failure to submit to, or the noncompletion of, the test or tests will result in the suspension or revocation of his or her privilege to operate a motor vehicle. Any person who is dead is deemed not to have withdrawn his or her consent and a test or tests may be administered at the direction of a peace officer.

(b) Any person who is afflicted with hemophilia is exempt from the blood test required by this section.

(c) Any person who is afflicted with a heart condition and is using an anticoagulant under the direction of a licensed physician and surgeon is exempt from the blood test required by this section.

(d) A person lawfully arrested for any offense allegedly committed while the person was driving a motor vehicle in violation of Section 23140, 23152, or 23153 may request the arresting officer to have a chemical test made of the arrested person's blood, breath, or urine for the purpose of determining the alcoholic content of that person's blood, and, if so requested, the arresting officer shall have the test performed.

(e) If the person, who has been arrested for a violation of Section 23140, 23152, or 23153, refuses or fails to complete a chemical test or tests, or requests that a blood or urine test be taken, the peace officer, acting on behalf of the department, shall serve the notice of the order of suspension or revocation of the person's privilege to operate a motor vehicle personally on the arrested person. The notice shall be on a form provided by the department.

(f) If the peace officer serves the notice of the order of suspension or revocation of the person's privilege to operate a motor vehicle, the peace officer shall take possession of any driver's license issued by this state which is held by the person. 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 arrest.

(g) The peace officer shall immediately forward a copy of the completed notice of suspension or revocation form and any driver's license taken into possession under subdivision (f), with the report required by Section 13380, to the department. If the person submitted to a blood or urine test, the peace officer shall forward the results immediately to the appropriate forensic laboratory. The forensic laboratory shall forward the results of the chemical tests to the department within 15 calendar days of the date of the arrest.

(h) A preliminary alcohol screening test that indicates the presence or concentration of alcohol based on a breath sample in order to establish reasonable cause to believe the person was driving a vehicle in violation of Section 23140, 23152, or 23153 is a field sobriety test and may be used by an officer as a further investigative tool.

(i) If the officer decides to use a preliminary alcohol screening test, the officer shall advise the person that he or she is requesting that person to take a preliminary alcohol screening test to assist the officer in determining if that person is under the influence of alcohol or drugs, or a combination of alcohol and drugs. The person's obligation to submit to a blood, breath, or urine test, as required by this section, for the purpose of determining the alcohol or drug content of that person's blood, is not satisfied by the person submitting to a preliminary alcohol screening test. The officer shall advise the person of that fact and of the person's right to refuse to take the preliminary alcohol screening test.

23614. (a) In addition to the requirements of Section 23612, a person who chooses to submit to a breath test shall be advised before or after the test that the breath-testing equipment does not retain any sample of the breath and that no breath sample will be available after the test which could be analyzed later by that person or any other person.

(b) The person shall also be advised that, because no breath sample is retained, the person will be given an opportunity to provide a blood or urine sample that will be retained at no cost to the person so that there will be something retained that may be subsequently analyzed for the alcoholic content of the person's blood. If the person completes a breath test and wishes to provide a blood or urine sample to be retained, the sample shall be collected and retained in the same manner as if the person had chosen a blood or urine test initially.

(c) The person shall also be advised that the blood or urine sample may be tested by either party in any criminal prosecution. The failure of either party to perform this test shall place neither a duty upon the opposing party to perform the test nor affect the admissibility of any other evidence of the alcoholic content of the blood of the person arrested.

(d) No failure or omission to advise pursuant to this section shall affect the admissibility of any evidence of the alcoholic content of the blood of the person arrested.

Article 2. Prior and Separate Offenses

23620. (a) For the purposes of this division and Chapter 12 (commencing with Section 23100) of Division 11, a separate offense which resulted in a conviction of a violation of subdivision (f) of Section 655 of the Harbors and Navigation Code or of Section 191.5 of, or paragraph (3) of subdivision (c) of Section 192 of, the Penal Code is a separate offense of a violation of Section 23153.

(b) For the purposes of this division and Chapter 12 (commencing with Section 23100) of Division 11, and Section 13352, a separate offense which resulted in a conviction of a violation of subdivision (b), (c), (d), or (e) of Section 655 of the Harbors and Navigation Code is a separate violation of Section 23152.

23622. (a) In any case charging a violation of Section 23152 or 23153 and the offense occurred within seven years of one or more separate violations of Section 23103, as specified in Section 23103.5, which occurred on or after January 1, 1982, 23152, or 23153, or any combination thereof, which resulted in convictions, the court shall not strike any separate conviction of those offenses for purposes of sentencing in order to avoid imposing, as part of the sentence or term of probation, the minimum time of imprisonment and the minimum fine, as provided in this chapter, or for purposes of avoiding revocation, suspension, or restriction of the privilege to operate a motor vehicle, as provided in this code.

(b) In any case charging a violation of Section 23152 or 23153, the court shall obtain a copy of the driving record of the person charged from the Department of Motor Vehicles and may obtain any records from the Department of Justice or any other source to determine if one or more separate violations of Section 23103, as specified in Section 23103.5, which occurred on or after January 1, 1982, 23152, or 23153, or any combination thereof, which resulted in convictions, have occurred within seven years of the charged offense. The court may obtain, and accept as rebuttable evidence, a printout from the Department of Motor Vehicles of the driving record of the person charged, maintained by electronic and storage media pursuant to Section 1801 for the purpose of proving those separate violations.

(c) If any separate convictions of violations of Section 23152 or 23153 are reported to have occurred within 10 years of the charged offense, the court shall notify each court where any of the separate convictions occurred for the purpose of enforcing terms and conditions of probation pursuant to Section 23602.

23624. Only one challenge shall be permitted to the constitutionality of a separate conviction of a violation of Section 14601, 14601.2, 23152, or 23153, which was entered in a separate

proceeding. When a proceeding to declare a separate judgment of conviction constitutionally invalid has been held, a determination by the court that the separate conviction is constitutional precludes any subsequent attack on constitutional grounds in a subsequent prosecution in which the same separate conviction is charged. In addition, any determination that a separate conviction is unconstitutional precludes any allegation or use of that separate conviction in any judicial or administrative proceeding, and the department shall strike that separate conviction from its records. Pursuant to Section 1803, the court shall report to the Department of Motor Vehicles any determination upholding a conviction on constitutional grounds and any determination that a conviction is unconstitutional.

This section shall not preclude a subsequent challenge to a conviction if, at a later time, a subsequent statute or appellate court decision having retroactive application affords any new basis to challenge the constitutionality of the conviction.

23626. A conviction of an offense in any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or the Dominion of Canada which, if committed in this state, would be a violation of Section 23152 or 23153 of this code, or Section 191.5 of, or paragraph (3) of subdivision (c) of Section 192 of, the Penal Code, is a conviction of Section 23152 or 23153 of this code, or Section 191.5 of, or paragraph (3) of subdivision (c) of Section 192 of, the Penal Code for the purposes of this code.

Article 3. Defenses

23630. The fact that any person charged with driving under the influence of any drug or the combined influence of alcoholic beverages and any drug in violation of Section 23152 or 23153 is, or has been entitled to use, the drug under the laws of this state shall not constitute a defense against any violation of the sections.

Article 4. Dismissal on the Record

23635. When an allegation of a violation of Section 23152 is dismissed by the court, an allegation of a different or lesser offense is substituted for an allegation of a violation of Section 23152, or an allegation of a separate conviction is dismissed or stricken, the court shall specify on the record its reason or reasons for the order. The court shall also specify on the record whether the dismissal, substitution, or striking was requested by the prosecution and whether the prosecution concurred in or opposed the dismissal, substitution, or striking.

When the prosecution makes a motion for a dismissal or substitution, or for the striking of a separate conviction, the

prosecution shall submit a written statement which shall become part of the court record and which gives the reasons for the motion. The reasons shall include, but need not be limited to, problems of proof, the interests of justice, why another offense is more properly charged, if applicable, and any other pertinent reasons. If the reasons include the "interests of justice," the written statement shall specify all of the factors which contributed to this conclusion.

Article 5. Court Restrictions

23640. (a) In any case in which a person is charged with a violation of Section 23152 or 23153, prior to acquittal or conviction, the court shall neither suspend nor stay the proceedings for the purpose of allowing the accused person to attend or participate, nor shall the court consider dismissal of or entertain a motion to dismiss the proceedings because the accused person attends or participates during that suspension, in any one or more education, training, or treatment programs, including, but not limited to, a driver improvement program, a treatment program for persons who are habitual users of alcohol or other alcoholism program, a program designed to offer alcohol services to problem drinkers, an alcohol or drug education program, or a treatment program for persons who are habitual users of drugs or other drug-related program.

(b) This section shall not apply to any attendance or participation in any education, training, or treatment programs after conviction and sentencing, including attendance or participation in any of those programs as a condition of probation granted after conviction when permitted pursuant to this article.

Article 6. Alcohol Assessment

23645. (a) Except as otherwise provided in subdivision (c), any person convicted of a violation of Section 23152 or 23153 shall, in addition to any other fine, assessment, or imprisonment imposed pursuant to law, pay an alcohol abuse education and prevention penalty assessment in an amount not to exceed fifty dollars ($50) for deposit and distribution pursuant to Section 1463.25 of the Penal Code.

(b) The payment of the penalty assessment under this section shall be ordered upon conviction of a person of a violation of Section 23152 or 23153 irrespective of any other proceeding and, if probation is granted, the payment of the penalty assessment shall also be ordered as a condition of probation, except in unusual cases that are subject to subdivision (d) of Section 1464 of the Penal Code.

(c) The court shall determine if the defendant has the ability to pay a penalty assessment. If the court determines that the defendant has the ability to pay a penalty assessment, the court may set the amount to be paid and order the defendant to pay that sum to the

county in the manner in which the court believes reasonable and compatible with the defendant's financial ability. In making a determination of whether a defendant has the ability to pay, the court shall take into account the amount of any fine imposed upon the defendant and any amount the defendant has been ordered to pay in restitution. If the court determines that the defendant does not have the ability to pay a penalty assessment, the defendant shall not be required to pay a penalty assessment.

(d) Five percent of the funds allocated to primary prevention programs to the school and the communities pursuant to subdivision (a) of Section 11802 of the Health and Safety Code shall be used to conduct an annual evaluation. The annual evaluation shall be conducted by the office of the county superintendent of schools in counties where the program is operating in a single county or in the office of the county superintendent of schools in the county designated as the lead county in counties where the program is operating as a consortium of counties. The evaluation shall contain the following:

(1) A needs assessment evaluation that provides specific data regarding the problem to be resolved.

(2) A written report of the planning process outlining the deliberations, considerations, and conclusions following a review of the needs assessment.

(3) An end of fiscal year accountability evaluation that will indicate the program's continuing ability to reach appropriate program beneficiaries, deliver the appropriate benefits, and use funds appropriately.

(4) An impact evaluation charged with the task of assessing the effectiveness of the program. Guidelines for the evaluation report format and the timeliness for the submission of the report shall be developed by the State Department of Education. Each county shall submit an evaluation report annually to the State Department of Education and the State Department of Education shall write and submit a report to the Legislature and Governor.

23646. A county may develop, implement, operate, and administer an alcohol and drug problem assessment program pursuant to this article by resolution of the board of supervisors. Any judicial district within the county may elect not to participate in the county alcohol and drug problem assessment program. The alcohol and drug problem assessment program may include a referral and client tracking component.

23647. (a) Any person convicted of a violation of Section 23152 or 23153 in a judicial district that participates in a county alcohol and drug problem assessment program pursuant to this article shall participate in the program.

(b) Any person convicted of a violation of Section 23103, as specified in Section 23103.5, in a judicial district that participates in

a county alcohol and drug problem assessment program pursuant to this article, may be ordered to participate in the program.

23648. An alcohol and drug problem assessment report shall be made on each person who participates in the program. The report may be used to determine the appropriate sentence for any person convicted of a violation of Section 23103, as specified in Section 23103.5, or Section 23152 or 23153.

23649. (a) Notwithstanding any other provision of law, in addition to any other fine or penalty assessment, there shall be levied an assessment of not more than seventy-five dollars ($75) upon every fine, penalty, or forfeiture imposed and collected by the courts for a violation of Section 23152 or 23153 in any judicial district that participates in a county alcohol and drug problem assessment program pursuant to this article. An assessment of not more than seventy-five dollars ($75) shall be imposed and collected by the courts from each person convicted of a violation of Section 23103, as specified in Section 23103.5, who is ordered to participate in a county alcohol and drug problem assessment program pursuant to Section 23647.

(b) The court shall determine if the defendant has the ability to pay the assessment. If the court determines that the defendant has the ability to pay the assessment then the court may set the amount to be reimbursed and order the defendant to pay that sum to the county in the manner which the court determines is reasonable and compatible with the defendant's financial ability. In making a determination of whether a defendant has the ability to pay, the court shall take into account the amount of any fine imposed upon the defendant and any amount the defendant has been ordered to pay in restitution.

(c) Notwithstanding Section 1463 or 1464 of the Penal Code or any other provision of law, all moneys collected pursuant to this section shall be deposited in a special account in the county treasury and shall be used exclusively to pay for the costs of developing, implementing, operating, maintaining, and evaluating alcohol and drug problem assessment programs.

(d) On January 15 of each year, the treasurer of each county that administers an alcohol and drug problem assessment program shall determine those moneys in the special account which were not expended during the preceding fiscal year, and shall transfer those moneys to the general fund of the county.

(e) Any moneys remaining in the special account, if and when the alcohol and drug problem assessment program is terminated, shall be transferred to the general fund of the county.

(f) The county treasurer shall annually transfer an amount of money equal to the county's administrative cost incurred pursuant to this section, as he or she shall determine, from the special account to the general fund of the county.

23650. The Office of Traffic Safety shall adopt rules and guidelines to implement this article.

23651. This article shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

Article 7. Presentence Investigation

23655. (a) Upon any conviction of a violation of Section 23152 or 23153, any judge of the court may order a presentence investigation to determine whether a person convicted of the violation would benefit from one or more education, training, or treatment programs, and the court may order suitable education, training, or treatment for the person, in addition to imposing any penalties required by this code.

(b) In determining whether to require, as a condition of probation, the participation in a program pursuant to subdivision (b) of Section 23538, subdivision (b) of Section 23542, subdivision (b) of Section 23548, subdivision (b) of Section 23552, subdivision (b) of Section 23556, subdivision (b) of Section 23562, or subdivision (b) of Section 23568, the court may consider any relevant information about the person made available pursuant to a presentence investigation, which is permitted but not required by subdivision (a), or other screening procedure. No such information shall be furnished to the court, however, by any person who also provides services in a privately operated, approved program or who has any direct interest in a privately operated, approved program. In addition, the court shall obtain from the Department of Motor Vehicles a copy of the person's driving record to determine whether the person is eligible to participate in an approved program pursuant to the provisions of this article.

(c) The Judicial Council shall adopt a standard form for use by all courts, defendants, and alcohol or drug education programs in certifying to the court that the person (1) has enrolled within the specified time period, and (2) has successfully completed any program required by Section 23538 or 23556.

Article 8. Surrender and Notification of License Restriction

23660. If a person's privilege to operate a motor vehicle is required or ordered to be suspended or revoked by the Department of Motor Vehicles pursuant to other provisions of this code upon the conviction of an offense of this article, that person shall surrender each and every operator's license of that person to the court upon conviction. At the time of sentencing, if the court grants probation on terms which permit the person to retain his or her driving privilege, the court may return the person's operator's license to that person. The court shall transmit the license or licenses required to be

suspended or revoked to the Department of Motor Vehicles pursuant to Section 13550, and the court shall notify the department.

This section does not apply to an administrative proceeding by the Department of Motor Vehicles to suspend or revoke the driving privilege of any person pursuant to other provisions of law.

23662. (a) If a person's privilege to operate a motor vehicle is restricted by a court pursuant to this article, the court shall clearly mark the restriction and the dates of the restriction on each of that person's operator's licenses and promptly notify the Department of Motor Vehicles of the terms of the restriction in a manner prescribed by the department. The department shall place that restriction on the person's records in the department and enter the restriction on any license subsequently issued by the department to that person during the period of the restriction.

(b) If the court removes a restriction before the end of the previously specified term, the court shall so mark the person's operator's license in a manner prescribed by the department and promptly notify the department of the removal of the restriction.

(c) If a person is placed on probation pursuant to this article, the court shall promptly notify the Department of Motor Vehicles of the probation and probationary term and conditions in a manner prescribed by the department. The department shall place the fact of probation and the probationary term and conditions on the person's records in the department.

Article 9. Delayed Suspensions and Revocations

23665. If any person is convicted of a violation of Section 20001, or of Section 23152 or 23153 and is sentenced to one year in a county jail or more than one year in the state prison under Section 23540, 23542, 23546, 23548, 23550, 23550.5, 23552, 23554, 23556, 23558, 23560, 23562, 23566, or 23568, the court may postpone the revocation or suspension of the person's driving privilege until the term of imprisonment is served.

Article 10. Conflict of Interest

23670. A court shall not order or refer any person to any program, including an alcohol and other drug education program or a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, or to a provider of a program, in which any employee of the court has a direct or indirect economic interest.

Article 11. Operative Date

23675. This division shall become operative on July 1, 1999.

SEC. 85. Sections 1 to 83, inclusive, of this act, shall become operative on July 1, 1999.

SEC. 86. Any section of any act enacted by the Legislature during the 1998 calendar year that takes effect on or before January 1, 1999, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act. The repeal, or repeal and addition, of any article, chapter, part, title, or division of any code by this act shall not become operative if any section of any other act that is enacted by the Legislature during the 1998 calendar year and takes effect on or before January 1, 1999, amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

CHAPTER 119

An act to amend Section 12022.1 of the Penal Code, relating to punishment.

[Approved by Governor July 9, 1998. Filed with Secretary of State July 10, 1998.]

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

SECTION 1. Section 12022.1 of the Penal Code is amended to read:

12022.1. (a) For the purposes of this section only:

(1) "Primary offense" means a felony offense for which a person has been released from custody on bail or on his or her own recognizance prior to the judgment becoming final, including the disposition of any appeal, or for which release on bail or his or her own recognizance has been revoked. In cases where the court has granted a stay of execution of a county jail commitment or state prison commitment, "primary offense" also means a felony offense for which a person is out of custody during the period of time between the pronouncement of judgment and the time the person actually surrenders into custody or is otherwise returned to custody.

(2) "Secondary offense" means a felony offense alleged to have been committed while the person is released from custody for a primary offense.

(b) Any person arrested for a secondary offense which was alleged to have been committed while that person was released from custody on a primary offense shall be subject to a penalty enhancement of an additional two years in state prison which shall be served consecutive to any other term imposed by the court.

(c) The enhancement allegation provided in subdivision (b) shall be pleaded in the information or indictment which alleges the secondary offense, or in the information or indictment of the primary offense if a conviction has already occurred in the secondary offense, and shall be proved as provided by law. The enhancement allegation may be pleaded in a complaint but need not be proved at the preliminary hearing or grand jury hearing.

(d) Whenever there is a conviction for the secondary offense and the enhancement is proved, and the person is sentenced on the secondary offense prior to the conviction of the primary offense, the imposition of the enhancement shall be stayed pending imposition of the sentence for the primary offense. The stay shall be lifted by the court hearing the primary offense at the time of sentencing for that offense and shall be recorded in the abstract of judgment. If the person is acquitted of the primary offense the stay shall be permanent.

(e) If the person is convicted of a felony for the primary offense, is sentenced to state prison for the primary offense, and is convicted of a felony for the secondary offense, any state prison sentence for the secondary offense shall be consecutive to the primary sentence.

(f) If the person is convicted of a felony for the primary offense, is granted probation for the primary offense, and is convicted of a felony for the secondary offense, any state prison sentence for the secondary offense shall be enhanced as provided in subdivision (b).

(g) If the primary offense conviction is reversed on appeal, the enhancement shall be suspended pending retrial of that felony. Upon retrial and reconviction, the enhancement shall be reimposed. If the person is no longer in custody for the secondary offense upon reconviction of the primary offense, the court may, at its discretion, reimpose the enhancement and order him or her recommitted to custody.

CHAPTER 120

An act to amend Section 13511.5 of the Penal Code, relating to crime prevention.

[Approved by Governor July 9, 1998. Filed with Secretary of State July 10, 1998.]

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

SECTION 1. Section 13511.5 of the Penal Code is amended to read:

13511.5. Each applicant for admission to a basic course of training certified by the Commission on Peace Officer Standards and Training that includes the carrying and use of firearms, as prescribed

by subdivision (a) of Section 832 and subdivision (a) of Section 832.3, who is not sponsored by a local or other law enforcement agency, or is not a peace officer employed by a state or local agency, department, or district, shall be required to submit written certification from the Department of Justice pursuant to Sections 11122, 11123, and 11124 that the applicant has no criminal history background which would disqualify him or her, pursuant to Section 12021 or 12021.1 of this code, or Section 8100 or 8103 of the Welfare and Institutions Code, from owning, possessing, or having under his or her control a firearm.

CHAPTER 121

An act to amend Section 128.6 of, and to amend and repeal Section 128.7 of, the Code of Civil Procedure, relating to civil procedure.

[Approved by Governor July 9, 1998. Filed with Secretary of State July 10, 1998.]

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

SECTION 1. Section 128.6 of the Code of Civil Procedure is amended to read:

128.6. (a) Every trial court may order a party, the party's attorney, or both to pay any reasonable expenses, including attorney's fees, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. This section also applies to judicial arbitration proceedings under Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3.

(b) For purposes of this section:

(1) "Actions or tactics" include, but are not limited to, the making or opposing of motions or the filing and service of a complaint or cross-complaint. The mere filing of a complaint without service thereof on an opposing party does not constitute "actions or tactics" for purposes of this section.

(2) "Frivolous" means (A) totally and completely without merit or (B) for the sole purpose of harassing an opposing party.

(c) Expenses pursuant to this section shall not be imposed except on notice contained in a party's moving or responding papers; or the court's own motion, after notice and opportunity to be heard. An order imposing expenses shall be in writing and shall recite in detail the conduct or circumstances justifying the order.

(d) In addition to any award pursuant to this section for conduct described in subdivision (a), the court may assess punitive damages against the plaintiff upon a determination by the court that the plaintiff's action was an action maintained by a person convicted of

a felony against the person's victim, or the victim's heirs, relatives, estate, or personal representative, for injuries arising from the acts for which the person was convicted of a felony, and that the plaintiff is guilty of fraud, oppression, or malice in maintaining the action.

(e) The liability imposed by this section is in addition to any other liability imposed by law for acts or omissions within the purview of this section.

(f) This section shall become operative on January 1, 2003, unless a statute that becomes effective on or before this date extends or deletes the repeal date of Section 128.7.

SEC. 2. Section 128.7 of the Code of Civil Procedure is amended to read:

128.7. (a) Every pleading, petition, written notice of motion, or other similar paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise provided by law, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, petition, written notice of motion, or other similar paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, all of the following conditions are met:

(1) It is not being presented primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

(3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

(4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation. In determining what sanctions, if any, should be ordered, the court shall consider whether a party seeking sanctions has exercised due diligence.

(1) A motion for sanctions under this section shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). Notice of motion shall be served as provided in Section 1010, but shall not be filed with or presented to the court unless, within 30 days after service of the motion, or such other period as the court may prescribe, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(2) On its own motion, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b), unless, within 30 days of service of the order to show cause, the challenged paper, claim, defense, contention, allegation, or denial is withdrawn or appropriately corrected.

(d) A sanction imposed for violation of subdivision (b) shall be limited to what is sufficient to deter repetition of this conduct or comparable conduct by others similarly situated. Subject to the limitations in paragraphs (1) and (2), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation.

(1) Monetary sanctions may not be awarded against a represented party for a violation of paragraph (2) of subdivision (b).

(2) Monetary sanctions may not be awarded on the court's motion unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

(e) When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this section and explain the basis for the sanction imposed.

(f) In addition to any award pursuant to this section for conduct described in subdivision (b), the court may assess punitive damages against the plaintiff upon a determination by the court that the plaintiff's action was an action maintained by a person convicted of a felony against the person's victim, or the victim's heirs, relatives, estate, or personal representative, for injuries arising from the acts for which the person was convicted of a felony, and that the plaintiff is guilty of fraud, oppression, or malice in maintaining the action.

(g) This section shall not apply to disclosures and discovery requests, responses, objections, and motions.

(h) A motion for sanctions brought by a party or a party's attorney primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, shall itself be subject to a motion for sanctions. It is the intent of the Legislature that courts shall vigorously use its sanctions authority to deter such improper conduct or comparable conduct by others similarly situated.

(i) This section shall apply to a complaint or petition filed on or after January 1, 1995, and any other pleading, written notice of motion, or other similar paper filed in such a matter.

(j) This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

CHAPTER 122

An act to add Section 2624 to the Penal Code, relating to prisoners.

[Approved by Governor July 9, 1998. Filed with Secretary of State July 10, 1998.]

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

SECTION 1. Section 2624 is added to the Penal Code, to read:

2624. (a) Notwithstanding any other provision of law, a court may, upon the submission of a written request by the party calling the witness, order an incarcerated witness to testify in legal proceedings via two-way electronic audiovisual communication.

(b) As used in this section, "legal proceedings" includes preliminary hearings, civil trials, and criminal trials.

(c) With reference to criminal trials only, the procedure described in this section shall only be used with the consent of both parties expressed in open court, and, in consultation with the defendant's counsel, upon a waiver by the defendant of his or her right to compel the physical presence of the witness, pursuant to the Sixth Amendment to the United States Constitution and Section 15 of Article I of the California Constitution. This waiver may be rescinded by the defendant upon a showing of good cause.

(d) No inducement shall be offered nor any penalty imposed in connection with a defendant's consent to allow a witness to testify via closed-circuit television.

CHAPTER 123

An act to amend Section 340.15 of the Code of Civil Procedure, relating to limitation of actions.

[Approved by Governor July 9, 1998. Filed with Secretary of State July 10, 1998.]

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

SECTION 1. Section 340.15 of the Code of Civil Procedure is amended to read:

340.15. (a) In any civil action for recovery of damages suffered as a result of domestic violence, the time for commencement of the action shall be the later of the following:

(1) Within three years from the date of the last act of domestic violence by the defendant against the plaintiff.

(2) Within three years from the date the plaintiff discovers or reasonably should have discovered that an injury or illness resulted from an act of domestic violence by the defendant against the plaintiff.

(b) As used in this section, "domestic violence" has the same meaning as defined in Section 6211 of the Family Code.

CHAPTER 124

An act to add Section 1367.09 to the Health and Safety Code, relating to health care service plans.

[Approved by Governor July 9, 1998. Filed with Secretary of State July 10, 1998.]

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

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

(a) Elderly persons and their families may select nursing facilities as a permanent home when their health status and functional limitations make it difficult for them to remain in the community. In addition, some elderly persons select continuing care retirement communities in advance of the need for care and services with the expectation that the continuing care retirement community will provide for their health and long-term care needs, if and when they need services, according to the provisions of their contract and financial arrangement with the facility.

(b) Health care service plan contracts that require enrollees be placed in a skilled nursing facility participating in the plan can

disrupt the residential arrangements of elderly and disabled persons and interfere with continuing care contracts.

(c) As of September 1996, there were 1.4 million Medicare beneficiaries enrolled in Medicare HMO plans in California, representing 37 percent of the more than 3.8 million Medicare beneficiaries eligible. Medicare HMO enrollment rates in California have been increasing at more than 20 percent per year since 1994, with nearly 300,000 new Medicare enrollees in health care service plans in 1996 alone.

(d) It is therefore the intent of the Legislature to enact reasonable protections to allow elderly and disabled enrollees to return to their residence, whether it be a freestanding skilled nursing facility, multilevel facility, or continuing care retirement community.

SEC. 2. Section 1367.09 is added to the Health and Safety Code, to read:

1367.09. (a) An enrollee with coverage for Medicare benefits who is discharged from an acute care hospital shall be allowed to return to a skilled nursing facility in which the enrollee resided prior to hospitalization, or the skilled nursing unit of a continuing care retirement community or multilevel facility in which the enrollee is a resident for continuing treatment related to the acute care hospital stay, if all of the following conditions are met:

(1) The enrollee is a resident of a continuing care retirement community, as defined in paragraph (10) of subdivision (a) of Section 1771, or is a resident of a multilevel facility, as defined in paragraph (9) of subdivision (d) of Section 15432 of the Government Code, or has resided for at least 60 days in a skilled nursing facility, as defined in Section 1250, that serves the needs of special populations, including religious and cultural groups.

(2) The primary care physician, and the treating physician if appropriate, in consultation with the patient, determines that the medical care needs of the enrollee, including continuity of care, can be met in the skilled nursing facility, or the skilled nursing unit of the continuing care retirement community, or multilevel facility. If a determination not to return the patient to the facility is made, the physician shall document reasons in the patient's medical record and share that written explanation with the patient.

(3) The skilled nursing facility, continuing care retirement facility, or multilevel facility is within the service area and agrees to abide by the plan's standards and terms and conditions related to the following:

(A) Utilization review, quality assurance, peer review, and access to health care services.

(B) Management and administrative procedures, including data and financial reporting that may be required by the plan.

(C) Licensing and certification as required by Section 1367.

(D) Appropriate certification of the facility by the Health Care Financing Administration or other federal and state agencies.

(4) (A) The skilled nursing facility, multilevel facility, or continuing care retirement community agrees to accept reimbursement from the health care service plan for covered services at either of the following rates:

(i) The rate applicable to similar skilled nursing coverage for facilities participating in the plan.

(ii) Upon mutual agreement, at a rate negotiated in good faith by the health care service plan or designated agent on an individual, per enrollee, contractual basis.

(B) Reimbursement shall not necessarily be based on actual costs and may be comparable to similar skilled nursing facility reimbursement methods available for other plan contracted facilities available to the individual member.

(b) The health care service plan, or designated agent, shall be required to reimburse the skilled nursing facility, continuing care retirement facility, or multilevel facility at the rate agreed to in paragraph (4) of subdivision (a).

(c) No skilled nursing facility, multilevel facility, or continuing care retirement community shall collect, or attempt to collect, or maintain any action of law, against a subscriber or enrollee to collect reimbursement owed by the health care service plan for health care services provided pursuant to this section, or for any amount in excess of the payment amount that the facility has agreed to accept in its agreement with the health care service plan.

(d) Reimbursement by the health care service plan or designated agent shall be for those services included in the Medicare risk contract between the health care service plan and enrollee.

(e) Nothing in this section requires a skilled nursing facility, continuing care retirement facility, or multilevel facility to accept as a skilled nursing unit patient anyone other than a resident of the facility.

(f) This section shall apply to a health care service plan contract that is issued, amended, or renewed on or after January 1, 1999.

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 that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

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CHAPTER 125

An act to amend Section 42238.18 of the Education Code, relating to school finance.

[Approved by Governor July 9, 1998. Filed with Secretary of State July 10, 1998.]

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

SECTION 1. Section 42238.18 of the Education Code is amended to read:

42238.18. (a) Notwithstanding any other provision of law, only those pupils enrolled in county office of education programs while detained in a juvenile hall, juvenile home, day center, juvenile ranch, juvenile camp, or regional youth educational facility established pursuant to Article 23 (commencing with Section 850), Article 24 (commencing with Section 880), and Article 24.5 (commencing with Section 894) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code shall be counted as juvenile court school pupils. For purposes of apportionments, those pupils in a group home housing 25 or more children placed pursuant to Sections 362, 727, and 730 of the Welfare and Institutions Code or in any group home housing 25 or more children and operating one or more additional sites under a central administration for children placed pursuant to Section 362, 727, or 730 of the Welfare and Institutions Code shall be reported as county group home and institutions pupils to the Superintendent of Public Instruction and shall be counted as juvenile court school pupils for purposes of apportionments.

(b) Notwithstanding any other provision of law, any county superintendent of schools operating juvenile court schools, county group home and institutions schools, or community schools, or any combination of these schools shall maintain an account in their general fund to be known as the juvenile court and community school account, and shall deposit all funds derived from the operation of juvenile court, county group home and institutions schools, and community schools into that account. Expenditures from the juvenile court and community school account shall be limited to the following:

(1) Those expenditures defined as direct costs of instructional programs by the California State School Accounting Manual, except that facility costs, including the costs of renting, leasing, purchasing, remodeling, constructing, or improving buildings and the costs of purchasing or improving land, shall be allowed as an instructional cost in the juvenile court and community school fund.

(2) Expenditures that are defined as documented direct support costs by the California State School Accounting Manual.

(3) Expenditures that are defined as allocated direct support costs by the California State School Accounting Manual.

(4) Other expenditures for support and indirect charges. However, these charges may not exceed 10 percent of the sum of the expenditures in paragraphs (1), (2), and (3).

Expenditures that represent contract payments to other agencies for the operation of juvenile court and community school programs shall be included in the juvenile court and community school account and the contract costs distributed to the cost categories defined in paragraphs (1), (2), (3), and (4). At the end of any given school year the net ending balance in the juvenile court and community school account may be distributed to a reserved account for economic contingencies or to a reserved account for capital outlay, provided that the combined total transferred does not exceed 15 percent of the previous year's authorized expenditures as specified above and also provided that funds placed in the reserved accounts shall only be expended for juvenile court, county group home and institutions, or community school programs. The net ending balance, except for those funds placed in a capital outlay fund, shall not exceed the greater of 15 percent of the previous year's expenditures or twenty-five thousand dollars ($25,000). A county may accumulate over a period of two or more given school years a net ending balance in the capital outlay reserved account of more than 15 percent of the previous fiscal year's expenditures under provisions of a resolution of the governing board. Funds in the capital outlay reserve are to be used for capital outlay only. The Superintendent of Public Instruction shall require an annual certification by county superintendents of schools beginning in the 1989–90 fiscal year that juvenile court, county group home and institutions, and community school funds have been expended as provided in this section and shall withhold from the subsequent year's apportionment an amount equal to any ending balance in the juvenile court and community school account in excess of the transfers to reserves for economic contingencies and capital outlay as described in this section.

(c) Notwithstanding any other provision of law, pupils who are referred by the county probation department under Section 601 or 654 of the Welfare and Institutions Code, shall be enrolled and eligible for apportionments in county community schools only after an individualized review and certification of the appropriateness of enrollment in the county group home and institution's school or county community school. The individualized review shall include representatives of the court, the county department of education, the county probation department, and either the school district of residence or, in cases in which the pupil resides in a group home or institution, the school district in which the group home or institution is located, and, in each case, the school district representative shall agree to the appropriateness of the proposed placement and pupils so placed shall have a probation officer assigned to their case.

(d) Regardless of the operative date of the amendments to this section made during the 1997 portion of the 1997–98 Regular Session,

this section, as so amended, shall be implemented as though it had been operative on July 1, 1996. For the purpose of implementing this section for the entire 1996–97 fiscal year, the Superintendent of Public Instruction and other public officers shall take all necessary steps to effect the required adjustments and shall have authority to adjust allowance computations, apportionments, and disbursements ordered from Section A of the State School Fund and other public funds.

CHAPTER 126

An act to amend Section 10236.1 of the Business and Professions Code, relating to real property transactions.

[Approved by Governor July 9, 1998. Filed with Secretary of State July 10, 1998.]

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

SECTION 1. Section 10236.1 of the Business and Professions Code is amended to read:

10236.1. No real estate licensee shall advertise to give or to offer to give to a prospective purchaser or lender any premium, gift or any other object of value as an inducement for making a loan, or purchasing a promissory note secured directly or collaterally by a lien on real property or a real property sales contract.

CHAPTER 127

An act to amend Section 1103 of the Evidence Code, relating to sex offenses.

[Approved by Governor July 9, 1998. Filed with Secretary of State July 10, 1998.]

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

SECTION 1. Section 1103 of the Evidence Code is amended to read:

1103. (a) In a criminal action, evidence of the character or a trait of character (in the form of an opinion, evidence of reputation, or evidence of specific instances of conduct) of the victim of the crime for which the defendant is being prosecuted is not made inadmissible by Section 1101 if the evidence is:

(1) Offered by the defendant to prove conduct of the victim in conformity with the character or trait of character.

(2) Offered by the prosecution to rebut evidence adduced by the defendant under paragraph (1).

(b) In a criminal action, evidence of the defendant's character for violence or trait of character for violence (in the form of an opinion, evidence of reputation, or evidence of specific instances of conduct) is not made inadmissible by Section 1101 if the evidence is offered by the prosecution to prove conduct of the defendant in conformity with the character or trait of character and is offered after evidence that the victim had a character for violence or a trait of character tending to show violence has been adduced by the defendant under paragraph (1) of subdivision (a).

(c) (1) Notwithstanding any other provision of this code to the contrary, and except as provided in this subdivision, in any prosecution under Section 261, 262, or 264.1 of the Penal Code, or under Section 286, 288a, or 289 of the Penal Code, or for assault with intent to commit, attempt to commit, or conspiracy to commit a crime defined in any of those sections, except where the crime is alleged to have occurred in a local detention facility, as defined in Section 6031.4, or in a state prison, as defined in Section 4504, opinion evidence, reputation evidence, and evidence of specific instances of the complaining witness' sexual conduct, or any of that evidence, is not admissible by the defendant in order to prove consent by the complaining witness.

(2) Notwithstanding paragraph (3), evidence of the manner in which the victim was dressed at the time of the commission of the offense shall not be admissible when offered by either party on the issue of consent in any prosecution for an offense specified in paragraph (1), unless the evidence is determined by the court to be relevant and admissible in the interests of justice. The proponent of the evidence shall make an offer of proof outside the hearing of the jury. The court shall then make its determination and at that time, state the reasons for its ruling on the record. For the purposes of this paragraph, "manner of dress" does not include the condition of the victim's clothing before, during, or after the commission of the offense.

(3) Paragraph (1) shall not be applicable to evidence of the complaining witness' sexual conduct with the defendant.

(4) If the prosecutor introduces evidence, including testimony of a witness, or the complaining witness as a witness gives testimony, and that evidence or testimony relates to the complaining witness' sexual conduct, the defendant may cross-examine the witness who gives the testimony and offer relevant evidence limited specifically to the rebuttal of the evidence introduced by the prosecutor or given by the complaining witness.

(5) Nothing in this subdivision shall be construed to make inadmissible any evidence offered to attack the credibility of the complaining witness as provided in Section 782.

(6) As used in this section, "complaining witness" means the alleged victim of the crime charged, the prosecution of which is subject to this subdivision.

CHAPTER 128

An act to amend Section 2708 of the Unemployment Insurance Code, relating to unemployment compensation disability insurance.

[Approved by Governor July 9, 1998. Filed with Secretary of State July 10, 1998.]

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

SECTION 1. 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 and 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, based on a physical examination and a documented medical history of the claimant by the physician or practitioner, 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 midwife, 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 129

An act to add Section 31461.5 to the Government Code, relating to county employees.

[Approved by Governor July 9, 1998. Filed with Secretary of State July 10, 1998.]

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

SECTION 1. Section 31461.5 is added to the Government Code, to read:

31461.5. Notwithstanding any other provision of law, salary bonuses or any other compensation incentive payments for regular duties or for additional services outside regular duties received under the program known on April 1, 1997, as the Executive and Unclassified Management Operational Incentive Plan or any successor program that is substantially similar by any members who are in positions identified as executive or unclassified management shall be excluded from all retirement benefit calculations.

CHAPTER 130

An act to amend Section 52740 of the Education Code, relating to educational materials.

[Approved by Governor July 9, 1998. Filed with Secretary of State July 10, 1998.]

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

SECTION 1. Section 52740 of the Education Code is amended to read:

52740. It is the intent of the Legislature to provide accurate instructional materials to schools on (a) the internment in the United States of persons of Japanese origin and its impact on Japanese-American citizens, (b) the Armenian genocide, and (c) the World War II internment, relocation, and restriction in the United States of persons of Italian origin and its impact on the Italian American community.

The Legislature finds and declares that there are few films or videotapes available on the subjects of the internment of persons of Japanese origin, the Armenian genocide, and the World War II internment, relocation, and restriction of persons of Italian origin, for teachers to use when teaching pupils about these three devastating events. The shortage of available films or videotapes on these subjects is especially true for the Armenian genocide.

The Legislature hereby finds and declares that films and videotapes giving a historically accurate depiction of the internment in the United States of persons of Japanese origin during World War II, the Armenian genocide, and the World War II internment, relocation, and restriction ofpersons of Italian origin, should be made in order that pupils will recognize these events for the horror they represented. The Legislature hereby encourages teachers to use these films and videotapes as a resource in teaching pupils about these three important historical events that are commonly overlooked in today's school curriculum.

CHAPTER 131

An act to amend Section 3030 of the Family Code, relating to children.

[Approved by Governor July 9, 1998. Filed with Secretary of State July 10, 1998.]

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

SECTION 1. Section 3030 of the Family Code is amended to read:

3030. (a) No person shall be granted physical or legal custody of, or unsupervised visitation with, a child if the person is required to be registered as a sex offender under Section 290 of the Penal Code where the victim was a minor, or if the person has been convicted under Section 273a, 273d, or 647.6 of the Penal Code, unless the court finds that there is no significant risk to the child and states its reasons in writing or on the record.

(b) No person shall be granted custody of, or visitation with, a child if the person has been convicted under Section 261 of the Penal Code and the child was conceived as a result of that violation.

(c) The court may order child support that is to be paid by a person subject to subdivision (a) or (b) to be paid through the district attorney's office, as authorized by Section 4573 of the Family Code and Section 11475.1 of the Welfare and Institutions Code.

(d) The court shall not disclose, or cause to be disclosed, the custodial parent's place of residence, place of employment, or the child's school, unless the court finds that the disclosure would be in the best interests of the child.

CHAPTER 132

An act to amend Sections 31725.7, 31760.1, 31760.2, 31785, 31785.1, 31786, and 31786.1 of, and to amend and renumber Section 31458.6 of, the Government Code, relating to county employee retirement systems.

[Approved by Governor July 9, 1998. Filed with Secretary of State July 10, 1998.]

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

SECTION 1. Section 31458.6 of the Government Code is amended and renumbered to read:

31485.8. Notwithstanding anything to the contrary in this chapter, a member who elects to purchase retirement service credit under Section 31494.3, 31641.1, 31641.5, 31646, or 31652, or under the

regulations adopted by the board pursuant to Section 31643 or 31644 shall complete that purchase within 120 days after the effective date of his or her retirement.

This section applies only to a county of the first class, as defined by Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28022, as amended by Chapter 43 of the Statutes of 1961.

SEC. 2. Section 31725.7 of the Government Code is amended to read:

31725.7. (a) At any time after filing an application for disability retirement with the board, the member may, if eligible, apply for, and the board in its discretion may grant, a service retirement allowance pending the determination of his or her entitlement to disability retirement. If he or she is found to be eligible for disability retirement, appropriate adjustments shall be made in his or her retirement allowance retroactive to the effective date of his or her disability retirement as provided in Section 31724.

(b) This section shall not be construed to authorize a member to receive more than one type of retirement allowance for the same period of time nor to entitle any beneficiary to receive benefits which the beneficiary would not otherwise have been entitled to receive under the type of retirement which the member is finally determined to have been entitled. In the event a member retired for service is found not to be entitled to disability retirement he or she shall not be entitled to return to his or her job as provided in Section 31725.

(c) If the retired member should die before a final determination is made concerning entitlement to disability retirement, the rights of the beneficiary shall be as selected by the member at the time of retirement for service. The optional or unmodified type of allowance selected by the member at the time of retirement for service shall also be binding as to the type of allowance the member receives if the member is awarded a disability retirement.

(d) Notwithstanding subdivision (c), if the retired member should die before a final determination is made concerning entitlement to disability retirement, the rights of the beneficiary may be as selected by the member at the time of retirement for service, or as if the member had selected an unmodified allowance. The optional or unmodified type of allowance selected by the member at the time of retirement for service shall not be binding as to the type of allowance the member receives if the member is awarded a disability retirement. A change to the optional or unmodified type of allowance shall be made only at the time a member is awarded a disability retirement and the change shall be retroactive to the service retirement date and benefits previously paid shall be adjusted. If a change to the optional or unmodified type of allowance is not made, the benefit shall be adjusted to reflect the differences in retirement benefits previously received. This paragraph shall only apply to members who retire on or after January 1, 1999.

SEC. 3. Section 31760.1 of the Government Code is amended to read:

31760.1. Upon the death of any member after retirement for service or non-service-connected disability from a retirement system established in a county subject to the provisions of Section 31676.1, 60 percent of his or her retirement allowance, if not modified in accordance with one of the optional settlements specified in this article, shall be continued throughout life to his or her surviving spouse. If there is no surviving spouse entitled to an allowance hereunder or if she or he dies before every natural or adopted child of the deceased member attains the age of 18 years, then the allowance which the surviving spouse would have received had she or he lived, shall be paid to his or her natural or adopted child or children under that age collectively, to continue until every child dies or attains that age; provided, that no child shall receive any allowance after marrying or attaining the age of 18 years. No allowance, however, shall be paid under this section to a surviving spouse unless she or he was married to the member at least one year prior to the date of his or her retirement. The right of a child or children of a deceased member to receive an allowance under this section, in the absence of an eligible surviving spouse, shall not be dependent on whether the child or children were nominated by the deceased member as the beneficiary of any benefits payable upon or by reason of the member's death, and shall be superior to and shall supersede the rights and claims of any other beneficiary so nominated.

Notwithstanding any other provisions of this section, the benefits otherwise payable to the children of the member shall be paid to those children through the age of 21 if the children remain unmarried and are regularly enrolled as full-time students in an accredited school as determined by the board.

If at the death of any retired member there is no surviving spouse or minor children eligible for the 60-percent continuance provided in this section, and the total retirement allowance income received by him or her during his or her lifetime did not equal or exceed his or her accumulated normal contributions, his or her designated beneficiary shall be paid an amount equal to the excess of his or her accumulated normal contributions over his or her total retirement allowance income.

The superseding rights pursuant to this section shall not affect benefits payable to a named beneficiary as provided under Section 31789, 31789.01, 31789.1, 31789.12, 31789.13, 31789.2, 31789.3, 31789.5, or 31790.

SEC. 4. Section 31760.2 of the Government Code is amended to read:

31760.2. Notwithstanding Section 31760.1, upon the death of any member after retirement for service or non-service-connected disability from a retirement system established in a county pursuant to this chapter, 60 percent of his or her retirement allowance, if not

modified in accordance with one of the optional settlements specified in this article, shall be continued throughout life to his or her surviving spouse. If there is no surviving spouse entitled to an allowance under this section or if she or he dies before every child of the deceased member attains the age of 18 years, then the allowance which the surviving spouse would have received had he or she lived, shall be paid to his or her child or children under that age collectively, to continue until every such child dies or attains that age. However, no child shall receive any allowance after marrying or attaining the age of 18 years.

No allowance shall be paid under this section to a surviving spouse unless he or she was married to the member at least two years prior to the date of death and has attained the age of 55 years on or prior to the date of death and no other person has been designated in an order of a court in a domestic relations proceeding as a payee.

Notwithstanding any other provisions of this section, the benefits otherwise payable to the children of the member shall be paid to the children through the age of 21 if the children remain unmarried and are regularly enrolled as full-time students in an accredited school, as determined by the board.

If at the death of any retired member there is no surviving spouse or minor children eligible for the 60-percent continuance provided in this section and the total retirement allowance income received by him or her during his or her lifetime did not equal or exceed his or her accumulated normal contributions, his or her designated beneficiary shall be paid an amount equal to the excess of his or her accumulated normal contributions over his or her total retirement allowance income.

No allowance shall be paid pursuant to this section to any person who is entitled to an allowance pursuant to Section 31760.1.

The superseding rights pursuant to this section shall not affect benefits payable to a named beneficiary as provided under Section 31789, 31789.01, 31789.1, 31789.12, 31789.13, 31789.2, 31789.3, 31789.5, or 31790.

This section shall not be operative in any county until the time as the board of supervisors shall, by resolution adopted by a majority vote, make this section applicable in the county.

SEC. 5. Section 31785 of the Government Code is amended to read:

31785. Upon the death of any safety member, after retirement for service or non-service-connected disability from a retirement system established in a county subject to the provisions of Section 31676.1 or 31695.1, 60 percent of his or her retirement allowance if not modified in accordance with one of the optional settlements specified in Article 11 (commencing with Section 31760), shall be continued throughout life to his or her surviving spouse. If there is no surviving spouse entitled to an allowance hereunder or if she or he dies before every child of the deceased safety member attains the age of 18 years,

then the allowance which the surviving spouse would have received had she or he lived, shall be paid to his or her child or children under that age, collectively, to continue until every child dies or attains that age; provided, that no child shall receive any allowance after marrying or attaining the age of 18 years. No allowance, however, shall be paid under this section to a surviving spouse unless she or he was married to the safety member at least one year prior to the date of his or her retirement.

Any qualified surviving spouse or children of a member of a pension system established pursuant to either Chapter 4 (commencing with Section 31900) or Chapter 5 (commencing with Section 32200), who shall have been retired on or before December 31, 1951, shall be paid a retirement allowance pursuant to the provisions of this section. In cases where the death of a member occurred prior to January 1, 1952, the payment of the retirement allowance to the qualified surviving spouse or children shall be made effective on January 1, 1952.

Notwithstanding any other provisions of this section, the benefits otherwise payable to the children of the member shall be paid to those children through the age of 21 if the children remain unmarried and are regularly enrolled as full-time students in an accredited school as determined by the board.

The superseding rights pursuant to this section shall not affect benefits payable to a named beneficiary as provided under Section 31789, 31789.01, 31789.1, 31789.12, 31789.13, 31789.2, 31789.3, 31789.5, or 31790.

SEC. 6. Section 31785.1 of the Government Code is amended to read:

31785.1. Notwithstanding Section 31785, upon the death of any safety member, after retirement for service or non-service-connected disability from a retirement system established in a county pursuant to this chapter, 60 percent of his or her retirement allowance if not modified in accordance with one of the optional settlements specified in Article 11 (commencing with Section 31760), shall be continued throughout life to his or her surviving spouse. If there is no surviving spouse entitled to an allowance under this section or if she or he dies before every child of the deceased safety member attains the age of 18 years, then the allowance which the surviving spouse would have received had he or she lived, shall be paid to his or her child or children under that age, collectively, to continue until every child dies or attains that age. However, no child shall receive any allowance after marrying or attaining the age of 18 years.

No allowance shall be paid under this section to a surviving spouse unless he or she was married to the safety member at least two years prior to the date of death and has attained the age of 55 years on or prior to the date of death and no other person has been designated in an order of a court in a domestic relations proceeding as a payee.

Notwithstanding any other provisions of this section, the benefits otherwise payable to the children of the member shall be paid to the children through the age of 21 if the children remain unmarried and are regularly enrolled as full-time students in an accredited school as determined by the board.

No allowance shall be paid pursuant to this section to any person who is entitled to an allowance pursuant to Section 31785.

The superseding rights pursuant to this section shall not affect benefits payable to a named beneficiary as provided under Section 31789, 31789.01, 31789.1, 31789.12, 31789.13, 31789.2, 31789.3, 31789.5, or 31790.

This section shall not be operative in any county until the time as the board of supervisors shall, by resolution adopted by a majority vote, make this section applicable in the county.

SEC. 7. Section 31786 of the Government Code is amended to read:

31786. Upon the death of any member after retirement for service-connected disability, his or her retirement allowance as it was at his or her death if not modified in accordance with one of the optional settlements specified in Article 11 (commencing with Section 31760), shall be continued throughout life to his or her surviving spouse. If there is no surviving spouse entitled to an allowance hereunder or if she or he dies before every child of such deceased member attains the age of 18 years, then the allowance which the surviving spouse would have received had she or he lived, shall be paid to his or her child or children under said age, collectively, to continue until every such child dies or attains said age; provided, that no child shall receive any allowance after marrying or attaining the age of 18 years. No allowance, however, shall be paid under this section to a surviving spouse unless she or he was married to the member prior to the date of his or her retirement.

Notwithstanding any other provisions of this section, the benefits otherwise payable to the children of the member shall be paid to those children through the age of 21 if the children remain unmarried and are regularly enrolled as full-time students in an accredited school as determined by the board.

SEC. 8. Section 31786.1 of the Government Code is amended to read:

31786.1. Notwithstanding Section 31786, upon the death of any member after retirement for service-connected disability, his or her retirement allowance as it was at his or her death if not modified in accordance with one of the optional settlements specified in Article 11 (commencing with Section 31760), shall be continued throughout life to his or her surviving spouse. If there is no surviving spouse entitled to an allowance under this section or if he or she dies before every child of the deceased member attains the age of 18 years, then the allowance which the surviving spouse would have received had he or she lived, shall be paid to his or her child or children under that

age, collectively, to continue until every such child dies or attains that age. However, no child shall receive any allowance after marrying or attaining the age of 18 years.

No allowance shall be paid under this section to a surviving spouse unless he or she was married to the member at least two years prior to the date of death and has attained the age of 55 years on or prior to the date of death and no other person has been designated in an order of a court in a domestic relations proceeding as a payee.

Notwithstanding any other provisions of this section, the benefits otherwise payable to the children of the member shall be paid to the children through the age of 21 if the children remain unmarried and are regularly enrolled as full-time students in an accredited school as determined by the board.

No allowance shall be paid pursuant to this section to any person who is entitled to an allowance pursuant to Section 31786.

The superseding rights pursuant to this section shall not affect benefits payable to a named beneficiary as provided under Section 31789, 31789.01, 31789.1, 31789.12, 31789.13, 31789.2, 31789.3, 31789.5, or 31790.

This section shall not be operative in any county until such time as the board of supervisors shall, by resolution adopted by majority vote, make this section applicable in the county.

CHAPTER 133

An act to amend Section 402 of the Government Code, relating to state government, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 11, 1998. Filed with Secretary of State July 13, 1998.]

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

SECTION 1. Section 402 of the Government Code is amended to read:

402. (a) Every person who maliciously or for commercial purposes uses or allows to be used any reproduction or facsimile of the Great Seal of the State in any manner whatsoever is guilty of a misdemeanor.

(b) Notwithstanding subdivision (a), the California Sesquicentennial Commission may enter into an agreement to use the Great Seal of the State for officially sanctioned products of the California Sesquicentennial celebration as approved by the commission. The funds received from these sales shall revert to the California Sesquicentennial Foundation and be used only for official Sesquicentennial celebration purposes.

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

In order to provide, at the earliest possible time, that the California Sesquicentennial Commission may enter into an agreement to use the Great Seal of California for officially sanctioned products, it is necessary that this act take effect immediately.

CHAPTER 134

An act to amend Section 20221 of the Public Contract Code, relating to the San Francisco Bay Area Rapid Transit District.

[Approved by Governor July 11, 1998. Filed with Secretary of State July 13, 1998.]

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

SECTION 1. Section 20221 of the Public Contract Code is amended to read:

20221. (a) The purchase of all supplies, equipment, and materials when the expenditure required exceeds forty thousand dollars ($40,000), and the construction of facilities and works when the expenditure required exceeds ten thousand dollars ($10,000), shall be by contract let to the lowest responsible bidder. Notice requesting bids shall be published at least once in a newspaper of general circulation. This publication shall be made at least 10 days before the bids are received. The board may reject any and all bids and readvertise in its discretion.

(b) Whenever the expected procurement required exceeds two thousand five hundred dollars ($2,500) and, in the case of the construction of facilities and works does not exceed ten thousand dollars ($10,000) or in the case of the purchase of supplies, equipment, or materials does not exceed forty thousand dollars ($40,000), the district shall obtain a minimum of three quotations, either written or oral, that permit prices and terms to be compared.

(c) Where the expenditure required by the bid price is less than one hundred thousand dollars ($100,000), the general manager may act for the board. When acting pursuant to this subdivision, the general manager shall, in each instance, promptly notify the board of the action taken.

CHAPTER 135

An act to amend Section 35414 of the Vehicle Code, relating to vehicles, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 11, 1998. Filed with Secretary of State July 13, 1998.]

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

SECTION 1. Section 35414 of the Vehicle Code is amended to read:

35414. (a) Except where a load can be transported consistent with the limitations on vehicle and load length specified in other sections of this chapter, the limitations of this chapter as to length of vehicles do not apply when only poles, timbers, pipes, integral structural materials, or single unit component parts, including, but not limited to, missile components, aircraft assemblies, drilling equipment, and tanks not exceeding 80 feet in length are being transported upon any of the following:

(1) Upon a pole or pipe dolly or otherwise lawful trailer used as a pole or pipe dolly in connection with a motor vehicle.

(2) Upon a semitrailer, except for the limitations provided in Section 35410.

(3) Upon a semitrailer and a pole or pipe dolly used in connection with a truck tractor to haul flexible integral structural material.

(b) Poles and the tools and materials incidental to the work to be performed may be transported on a pole or pipe dolly or otherwise lawful semitrailer used as a pole or pipe dolly, transporting not more than three poles not exceeding 80 feet in length and when used by public utility companies or local public agencies engaged in the business of supplying electricity or telephone service, by the Department of Transportation, or by a licensed contractor in the performance of work for a utility, the department, or a local public agency, when such transportation is between a storage yard and job location where such tools and materials are to be used, in which event the limitations of this chapter as to length of vehicles and loads shall not apply.

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 expedite the use of new, effective methods of transporting the materials referred to in Section 35414 of the Vehicle Code, it is necessary for this act to take effect immediately.

CHAPTER 136

An act to add Chapter 10.1 (commencing with Section 669.7) to Part 1 of Division 1 of the Insurance Code, relating to insurance.

[Approved by Governor July 11, 1998. Filed with Secretary of State July 13, 1998.]

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

SECTION 1. Chapter 10.1 (commencing with Section 669.7) is added to Part 1 of Division 1 of the Insurance Code, to read:

CHAPTER 10.1. CERTAIN AUTOMOBILE INSURANCE

669.7. Notwithstanding Section 660, an insurer may deliver or issue an automobile liability, automobile physical damage, or automobile collision policy in this state insuring a single individual or individuals residing in the same household, as named insured, and under which the insured vehicle is a motor vehicle with a load capacity exceeding 1,500 pounds.

CHAPTER 137

An act to amend Sections 2451 and 8145 of the Streets and Highways Code, relating to highways.

[Approved by Governor July 11, 1998. Filed with Secretary of State July 13, 1998.]

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

SECTION 1. Section 2451 of the Streets and Highways Code is amended to read:

2451. (a) For the purposes of this chapter, "local agency" includes a city, a county, a separation-of-grade district, and any public entity that provides rail passenger transportation services.

(b) Before a separation-of-grade district may apply to the commission pursuant to this chapter for an allocation for a project, the district shall consult with and obtain the written consent of the city in which the project is located, or the county if the project is located in unincorporated territory.

SEC. 2. Section 8145 of the Streets and Highways Code is amended to read:

8145. The commission has all of the following powers:

(a) To sue and be sued in its own name.

(b) To adopt a seal.

(c) To lay out, establish, construct, and maintain projects for separation of grade by underpass, overpass, or tunnel, or any combination thereof, over or under one or more city streets, county roads or highways, state highways, railroads, street railroads, or other intersecting means of transportation, or any combination thereof, within the district and, for this purpose, to acquire by purchase, gift, devise, condemnation, or otherwise, and pay for and hold real and personal property and rights of way within the district. As to any project that would involve a state highway, the commission shall obtain the approval of the department as to the plans, and the project shall be constructed pursuant to an agreement between the commission and the department, as may be provided in the agreement. As to any project that would involve a railroad or street railroad, the district shall be governed by Chapter 6 (commencing with Section 1201) of Part 1 of Division 1 of the Public Utilities Code and by any other applicable provisions of law; and for the purposes and within the meaning of Chapter 6 (commencing with Section 1201) of Part 1 of Division 1 of the Public Utilities Code, and for those purposes and meaning only, a "separation-of-grade district" is a "political subdivision" and the "commission" of a separation-of-grade district is the "legislative body" of a political subdivision. For the purposes of Chapter 10 (commencing with Section 2450) of Division 3, a separation-of-grade district is a "local agency" and the commission of a separation-of-grade district is the "legislative body" of a local agency.

(d) To enter into an agreement with any city or county to provide for the relocation, redesign, or improvement of any street in the city or county directly affected by, or that is an integral part of, a separation-of-grade project. The district may expend funds pursuant to such an agreement.

(e) To remove an obstacle to traffic flow that otherwise would require constructing a separation of grade.

(f) To exercise the power of eminent domain to the full extent necessary to carry out this part.

(g) To make and accept all contracts, deeds, releases, and documents of any kind that are necessary or proper to the exercise of any of the powers of the district.

(h) To direct the payment of all lawful claims and demands against the district.

(i) To levy and collect taxes as provided.

(j) To borrow for the purpose of defraying general administrative and preliminary engineering expenses of the district prior to the time the money to be raised by the first tax levy for the district will be available, and to evidence that borrowing by nonnegotiable notes bearing interest at a rate to be fixed by the commission. The notes shall be signed by the president, and countersigned by the secretary, of the commission. The notes shall be payable from the first tax levy made by the district, and that tax levy shall contain a sum sufficient

to provide for the payment of the notes and the interest on those notes.

(k) To issue bonds as provided and to provide for their payment.

(*l*) To employ all necessary engineers, surveyors, agents, and workers to do the work on, or in connection with, the project or projects in the district, and to contract for engineering services with any city within the district or with the county.

(m) To do any and all things necessary or proper for the complete exercise of its powers and the accomplishment of the purpose for which it was formed.

CHAPTER 138

An act to add Sections 16000.7 and 16100.7 to the Business and Professions Code, relating to business licensing.

[Approved by Governor July 11, 1998. Filed with Secretary of State July 13, 1998.]

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

SECTION 1. Section 16000.7 is added to the Business and Professions Code, to read:

16000.7. (a) The Legislature hereby finds and declares that the prohibition on the imposition of regulatory licenses and license fees on federally chartered veterans' organizations that solicit donations as specified in this section is in need of uniform statewide regulation and constitutes a matter of statewide concern that shall be governed solely by this section.

(b) Notwithstanding Section 37101 of the Government Code, Section 16000 of this code, or any other provision of law, no city, including a charter city, shall require a regulatory license or impose a regulatory license fee with respect to the solicitation of donations for the support of veterans by federally chartered veterans' organizations specified in Title 36 of the United States Code.

(c) This section shall not be construed to prohibit licensing and regulation of business-related activities, such as those involving the sale or exchange of goods or services.

SEC. 2. Section 16100.7 is added to the Business and Professions Code, to read:

16100.7. (a) Notwithstanding Section 37101 of the Government Code, Section 7284 of the Revenue and Taxation Code, or Section 16000 of this code, no county or city and county shall require a regulatory license or impose a regulatory license fee with respect to the solicitation of donations for the support of veterans by federally chartered veterans' organizations specified in Title 36 of the United States Code.

(b) This section shall not be construed to prohibit licensing and regulation of business-related activities, such as those involving the sale or exchange of goods or services.

CHAPTER 139

An act to amend Section 62.1 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor July 11, 1998. Filed with Secretary of State July 13, 1998.]

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

SECTION 1. Section 62.1 of the Revenue and Taxation Code is amended to read:

62.1. Change in ownership shall not include either of the following:

(a) Any transfer, on or after January 1, 1985, of a mobilehome park to a nonprofit corporation, stock cooperative corporation, limited equity stock cooperative, or other entity formed by the tenants of a mobilehome park, for the purpose of purchasing the mobilehome park, provided that, with respect to any transfer of a mobilehome park on or after January 1, 1989, subject to this subdivision, the individual tenants who were renting at least 51 percent of the spaces in the mobilehome park prior to the transfer participate in the transaction through the ownership of an aggregate of at least 51 percent of the voting stock of, or other ownership or membership interests in, the entity which acquires the park. If, on or after January 1, 1998, a park is acquired by an entity that did not attain an initial tenant participation level of at least 51 percent on the date of the transfer, the entity shall have up to one year after the date of the transfer to attain a tenant participation level of at least 51 percent. If an individual tenant notifies the county assessor of the intention to comply with the conditions set forth in the preceding sentence, the mobilehome park may not be reappraised by the assessor during that period. However, if a tenant participation level of at least 51 percent is not attained within the one-year period, the county assessor shall thereafter levy escape assessments for the mobilehome park transfer.

(b) Any transfer or transfers on or after January 1, 1985, of rental spaces in a mobilehome park to the individual tenants of the rental spaces, provided that (1) at least 51 percent of the rental spaces are purchased by individual tenants renting their spaces prior to purchase, and (2) the individual tenants of these spaces form, within one year after the first purchase of a rental space by an individual tenant, a resident organization as described in subdivision (k) of Section 50781 of the Health and Safety Code, to operate and maintain

the park. If, on or after January 1, 1985, an individual tenant or tenants notify the county assessor of the intention to comply with the conditions set forth in the preceding sentence, any mobilehome park rental space which is purchased by an individual tenant in that mobilehome park during that period shall not be reappraised by the assessor. However, if all of the conditions set forth in the first sentence of this subdivision are not satisfied, the county assessor shall thereafter levy escape assessments for the spaces so transferred. This subdivision shall apply only to those rental mobilehome parks which have been in operation for five years or more.

(c) (1) If the transfer of a mobilehome park has been excluded from a change in ownership pursuant to subdivision (a) and the park has not been converted to condominium, stock cooperative ownership, or limited equity cooperative ownership, any transfer on or after January 1, 1989, of shares of the voting stock of, or other ownership or membership interests in, the entity which acquired the park in accordance with subdivision (a) shall be a change in ownership of a pro rata portion of the real property of the park unless the transfer is for the purpose of converting the park to condominium, stock cooperative ownership, or limited equity cooperative ownership or is excluded from change in ownership by Section 62, 63, or 63.1.

(2) For the purposes of this subdivision, "pro rata portion of the real property" means the total real property of the mobilehome park multiplied by a fraction consisting of the number of shares of voting stock, or other ownership or membership interests, transferred divided by the total number of outstanding issued or unissued shares of voting stock of, or other ownership or membership interests in, the entity which acquired the park in accordance with subdivision (a).

(3) Any pro rata portion or portions of real property which changed ownership pursuant to this subdivision may be separately assessed as provided in Section 2188.10.

(d) It is the intent of the Legislature that, in order to facilitate affordable conversions of mobilehome parks to tenant ownership, subdivision (a) apply to all bona fide transfers of rental mobilehome parks to tenant ownership, including, but not limited to, those parks converted to tenant ownership as a nonprofit corporation made on or after January 1, 1985.

CHAPTER 140

An act to amend Section 7205.1 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor July 11, 1998. Filed with Secretary of State July 13, 1998.]

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

SECTION 1. Section 7205.1 of the Revenue and Taxation Code is amended to read:

7205.1. (a) Notwithstanding any other provision of law, in connection with any use tax imposed pursuant to this part with respect to the lease (as described in Sections 371 and 372 of the Vehicle Code) of a new or used motor vehicle (as defined in Section 415 of the Vehicle Code) by a dealer or leasing company, the place of use for the reporting and transmittal of the use tax shall be determined as follows:

(1) If the lessor is a California new motor vehicle dealer (as defined in Section 426 of the Vehicle Code), or a leasing company, the place of use of the leased vehicle shall be deemed to be the city in which the lessor's place of business (as defined in Section 7205 and the regulations promulgated thereunder) is located.

(2) If a lessor, who is not a person described in paragraph (1), purchases the vehicle from a person as so described, the place of use of the leased vehicle shall be deemed to be the city in which the place of business (as defined in Section 7205 and the regulations promulgated thereunder) of the person from whom the lessor purchases the vehicle is located.

(3) The place of use as determined by this subdivision shall be the place of use for the duration of the lease contract, notwithstanding the fact that the lessor may sell the vehicle and assign the lease contract to a third party.

(b) Except as described in subdivision (a), this section shall not apply if the dealer or leasing company entering into the lease agreement is located outside of California.

(c) (1) The provisions of this section that are applicable to a California new motor vehicle dealer shall apply to lease transactions entered into on or after January 1, 1996.

(2) The provisions of this section, applicable to a leasing company, shall apply to lease transactions entered into on or after January 1, 1999.

(d) As used in this section, the following definitions shall apply:

(1) "City" means a city, city and county, or county.

(2) "Leasing company" means a motor vehicle dealer (as defined in Section 285 of the Vehicle Code), that complies with all of the following:

(A) The dealer originates lease contracts, described in subdivision (a), that are continuing sales and purchases.

(B) The dealer does not sell or assign those lease contracts that it originates in accordance with subparagraph (A).

(C) (i) The dealer has annual motor vehicle lease receipts of fifteen million dollars ($15,000,000) or more per location.

(ii) For purposes of this subparagraph, only those periodic payments required by the lease shall be considered in determining

whether a lessor has annual receipts of fifteen million dollars ($15,000,000) or more. Amounts received by lessors attributable to capitalized cost reductions or amounts paid by a lessee upon his or her exercising an option shall not be considered in determining whether a lessor has annual lease receipts of fifteen million dollars ($15,000,000) or more.

(e) If the lessor is not a dealer described in paragraph (1) of subdivision (a), or a person who is described in paragraph (2) of subdivision (a) as purchasing from a dealer, the use tax shall be reported to and distributed through the countywide pool of the county in which the lessee resides.

CHAPTER 141

An act to amend Section 3482.1 of the Civil Code, relating to nuisance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 11, 1998. Filed with Secretary of State July 13, 1998.]

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

SECTION 1. Section 3482.1 of the Civil Code is amended to read:

3482.1. (a) As used in this section:

(1) "Person" means an individual, proprietorship, partnership, corporation, club, or other legal entity.

(2) "Sport shooting range" or "range" means an area designed and operated for the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, or any other similar sport or law enforcement training purpose.

(3) "Indoor shooting range" means a totally enclosed facility designed to offer a totally controlled shooting environment that includes impenetrable walls, floor and ceiling, adequate ventilation and lighting systems, and acoustical treatment for sound attenuation suitable for the range's approved use.

(4) "Nighttime" means between the hours of 10 p.m. and 7 a.m.

(b) (1) Except as provided in subdivision (f), a person who operates or uses a sport shooting range in this state shall not be subject to civil liability or criminal prosecution in any matter relating to noise or noise pollution resulting from the operation or use of the range if the range is in compliance with any noise control laws or ordinances that applied to the range and its operation at the time construction or operation of the range was approved by a local public entity having jurisdiction in the matter, or if there were no such laws or ordinances that applied to the range and its operation at that time.

(2) Except as provided in subdivision (f), a person who operates or uses a sport shooting range or law enforcement training range is not subject to an action for nuisance, and a court shall not enjoin the use or operation of a range, on the basis of noise or noise pollution if the range is in compliance with any noise control laws or ordinances that applied to the range and its operation at the time construction or operation of the range was approved by a local public entity having jurisdiction in the matter, or if there were no such laws or ordinances that applied to the range and its operation at that time.

(3) Rules or regulations adopted by any state department or agency for limiting levels of noise in terms of decibel level which may occur in the outdoor atmosphere shall not apply to a sport shooting range exempted from liability under this section.

(c) A person who acquires title to or who owns real property adversely affected by the use of property with a permanently located and improved sport shooting range may not maintain a nuisance action with respect to noise or noise pollution against the person who owns the range to restrain, enjoin, or impede the use of the range where there has been no substantial change in the nature or use of the range. This section does not prohibit actions for negligence or recklessness in the operation of the range or by a person using the range.

(d) A sport shooting range that is in operation and not in violation of existing law at the time of the enactment of an ordinance described in subdivision (b) shall be permitted to continue in operation even if the operation of the sport shooting range at a later date does not conform to a new ordinance or an amendment to an existing ordinance if there has been no substantial change in the nature or use of the range. Nothing in this section shall be construed to limit the authority of a local agency to enforce any term of a conditional use permit.

(e) Except as otherwise provided in this section, this section does not prohibit a local public entity having jurisdiction in the matter from regulating the location and construction of a sport shooting range after the effective date of this section.

(f) This section does not prohibit a local public entity having jurisdiction in the matter from requiring that noise levels at the nearest residential property line to a range not exceed the level of normal city street noise which shall not be more than 60 decibels for nighttime shooting. The subdivision does not abrogate any existing local standards for nighttime shooting. The operator of a sport shooting range shall not unreasonably refuse to use trees, shrubs, or barriers, when appropriate, to mitigate the noise generated by nighttime shooting. For the purpose of this section, a reasonable effort to mitigate is an action that can be accomplished in a manner and at a cost that does not impose an unreasonable financial burden upon the operator of the range.

(g) This section does not apply to indoor shooting ranges.

(h) This section does not apply to a range in existence prior to January 1, 1998, that is operated for law enforcement training purposes by a county of the sixth class if the range is located without the boundaries of that county and within the boundaries of another county. This subdivision shall become operative on July 1, 1999.

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 correct a drafting error, thereby giving effect to the intent of the Legislature in revising the law of nuisance at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 142

An act to amend Sections 20201, 20206.4, 20581, 20631, 20642, 20685, 20783, 20803, 21031, 21042, 21161, 21201, 21321, 21511, 21541, and 21621 of the Public Contract Code, to amend Section 65 of the Antelope Valley-East Kern Water Agency Law (Chapter 2146 of the Statutes of 1959), to amend Section 13 of the Fresno Metropolitan Flood Control Act (Chapter 503 of the Statutes of 1955), and to amend Section 28 of the Kings River Conservation District Act (Chapter 931 of the Statutes of 1951), relating to public works.

[Approved by Governor July 11, 1998. Filed with Secretary of State July 13, 1998.]

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

SECTION 1. Section 20201 of the Public Contract Code is amended to read:

20201. Every complete project for new construction or project for any alteration, maintenance, or repair, if the costs of materials, supplies and labor exceed fifteen thousand dollars ($15,000), shall be let to the lowest responsible bidder. The board shall adopt plans and specifications, strain sheets, and working details and shall advertise for bids for the project in accordance with the plans and specifications so adopted. Notice inviting bids for all projects shall be published in a newspaper in the district at least one week prior to the time specified for receiving bids.

SEC. 2. Section 20206.4 of the Public Contract Code is amended to read:

20206.4. Except as otherwise provided in this article, the board may annually advertise for sealed bids for furnishing the district with goods, merchandise, stores, subsistence, printing, materials, and all other supplies, and advertising. The advertisement shall be published

pursuant to Section 6062 of the Government Code in the county in which the greater part of the district is situated.

SEC. 3. Section 20581 of the Public Contract Code is amended to read:

20581. Before making any contract for the construction or improvement of works in carrying out any project totaling twenty-five thousand dollars ($25,000) or more, the board shall advertise for bids.

SEC. 4. Section 20631 of the Public Contract Code is amended to read:

20631. Contracts in excess of two thousand five hundred dollars ($2,500) for the construction or repair of any levees or associated works, unless the construction or repair is done under its own superintendence, shall be made pursuant to this chapter.

SEC. 5. Section 20642 of the Public Contract Code is amended to read:

20642. When work is not to be done by the district itself by force account, and the amount involved is thirty-five thousand dollars ($35,000), or more, any contract for the doing of the work shall be let to the lowest responsible bidder, after publication, in the manner prescribed by the board, of notices inviting bids therefor. However, the board may reject any and all proposals.

SEC. 6. Section 20685 of the Public Contract Code is amended to read:

20685. (a) All contracts for the construction of any unit of work, except as provided in this article, estimated to cost in excess of fifteen thousand dollars ($15,000), shall be let to the lowest bidder after competitive bidding. The board shall have the right to reject any bid, in which case the board may call for new bids.

(b) In the event no proposals are received, or where the estimated cost of the work does not exceed the sum of ten thousand dollars ($10,000), or where the work consists of emergency work, the board of directors may have that work done by force account. In the case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The district shall have the power to purchase, in the open market without calling for bids, materials and supplies for use in the work either under contract or by force account. However, materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased if the cost exceeds fifteen thousand dollars ($15,000), without calling for bids and awarding the contract to the lowest responsible bidder.

SEC. 7. Section 20783 of the Public Contract Code is amended to read:

20783. When work is done by the district itself by force account, the amount shall not exceed five thousand dollars ($5,000). When the expenditure required for the work exceeds thirty-five thousand

dollars ($35,000), it shall be contracted for and let to the lowest responsible bidder after notice. The notice inviting bids shall set a date for the opening of bids. The first publication or posting of the notice shall be at least 10 days before the date of opening the bids. Notice shall be published at least twice, not less than five days apart, in a newspaper of general circulation, printed and published in the district, or if there is none, it shall be posted in at least three public places in the district that have been designated by the district board as the places for posting this notice. The notice shall distinctly state the work to be done.

In its discretion, the district board may reject any bids presented and readvertise. If two or more bids are the same and the lowest, the district board may accept the one it chooses. If no bids are received, the district board may have the work done without further bid.

If all bids are rejected, the district board, on a resolution adopted by a four-fifths vote, may declare that the work can be performed more economically by day labor, or the materials or supplies furnished at a lower price in the open market and may have the work done in a manner stated in the resolution in order to take advantage of this lower cost.

If there is a present or anticipated great public calamity, including an extraordinary fire, flood, storm, or other disaster the district board may, by resolution adopted by a four-fifths vote declaring that the public interest and necessity demand immediate expenditure of public money to safeguard life, health, or property, expend any sum required in the emergency without submitting the expenditure to bid.

Cost records of the work shall be kept in the manner provided in Sections 4000 to 4007, inclusive, of the Government Code.

This section shall not apply to sewerage maintenance, repair work, or to any uncompleted works under construction by district forces prior to the enactment of this section, and shall not be construed to exempt any work from Part 7 (commencing with Section 1720) of Division 2 of the Labor Code.

SEC. 8. Section 20803 of the Public Contract Code is amended to read:

20803. When the expenditure required for a district project exceeds fifteen thousand dollars ($15,000), it shall be contracted for and let to the lowest responsible bidder after notice, subject to Section 20805.

SEC. 9. Section 21031 of the Public Contract Code is amended to read:

21031. (a) In all work of improvement or repair of any of the works or property of the district and in the furnishing of materials or supplies therefor, when the expenditures required exceed twenty-five thousand dollars ($25,000), the work shall be done by contract, and shall be let to the lowest responsible bidder, after notice by publication in a newspaper of general circulation published in the

district for at least two insertions in a weekly newspaper or at least 10 insertions in a daily newspaper; the notices shall state the work contemplated or the materials or supplies required, or both. The board of trustees may reject any bid presented and readvertise in their discretion. The board may declare and determine that in its opinion the work in question can be performed more economically by day labor or the materials or supplies can be furnished at a lower price in the open market, and they may proceed to have the work done or the materials purchased without further observance of the foregoing provisions of this section.

(b) In case of an emergency, the board of trustees may declare a state of great public emergency and proceed to have all necessary work done and materials and supplies furnished without further observance of the foregoing provisions of this section. If notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) None of the foregoing provisions of this section apply to work done by contract with the United States, the State of California, or any political subdivision, or public agency thereof. Any work of improvement or repair provided for in this article may be located, constructed and maintained in, along, or across any railroad, public road, or highway in the County of Sacramento, in a manner that ensures security for life and property. The board of trustees shall restore or cause to be restored the road or highway to its former state as near as possible to preserve its usefulness.

SEC. 10. Section 21042 of the Public Contract Code is amended to read:

21042. The district may prescribe methods for the construction of works and for the letting of contracts for any of the following purposes:

(a) The construction of works, structures, or equipment.

(b) The performance or furnishing of labor, materials, or supplies, necessary or convenient for carrying out any of the purposes of this act.

(c) The acquisition or disposal of any real or personal property.

When work is not to be done by the district itself by force account, and the amount involved is forty thousand dollars ($40,000), or more, any contract for the doing of the works shall be made by the district with the lowest and best bidder after the publication pursuant to Section 6061 of the Government Code in a newspaper of general circulation published within the district, of a notice calling for bids and fixing a period during which bids will be received, which shall be not less than 10 days after the publication of the notice. The district may reject any and all of the bids presented and may readvertise in its discretion. After rejecting bids, or if no bids are received, the district may determine and declare that in its opinion, based on estimates submitted by the engineer for the district, any work may be performed better or more economically by the district with its

own employees, or after hiring additional employees. After the adoption of a resolution to this effect by at least seven affirmative votes of the directors of the district, the district may proceed to have that work done in the manner stated and without further observance of the provisions of this section.

SEC. 11. Section 21161 of the Public Contract Code is amended to read:

21161. (a) Any improvement or unit of work not performed by district personnel and estimated by the engineer to cost in excess of twenty-five thousand dollars ($25,000) shall be done by contract. All contracts shall be let to the lowest responsible bidder or bidders in the manner provided in this article. The board shall first determine whether the contract shall be let as a single unit for the whole of the work, or shall be divided into severable parts, or both, according to the best interests of the district. The board shall call for bids and advertise the call by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the district inviting sealed proposals for the construction or performance of the improvement or work before any contract is made. The call for bids shall state whether the work is to be performed as a unit for the whole thereof or shall be divided into severable specific parts, or both, as stated in the call. The board may let the work by single contract or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material, the bonds to contain the terms and conditions set forth in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code and to be subject to the provisions of that title. The board shall also have the right to reject any bid. In the event all proposals are rejected or no proposals are received pursuant to advertisement, or the estimated cost of the work does not exceed five thousand dollars ($5,000), or the work consists of channel protection, maintenance work, or emergency work, the board may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The district may purchase in the open market, without advertising for bids, materials and supplies for use in any work either under contract or by force account.

(b) The provisions of this section requiring competitive bidding and the award of contracts to the lowest responsible bidder are inapplicable to the extent the improvement or unit of work is to be performed on its own facilities by a public utility subject to the jurisdiction of the California Public Utilities Commission.

SEC. 12. Section 21201 of the Public Contract Code is amended to read:

21201. All contracts for the construction of any unit of work, except as provided, estimated to cost in excess of ten thousand dollars ($10,000) shall be let to the lowest responsible bidder in the manner as provided.

SEC. 13. Section 21321 of the Public Contract Code is amended to read:

21321. (a) All contracts for any improvement or unit of work, when the cost according to the estimate of the engineer will exceed thirty thousand dollars ($30,000), shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit, or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the agency's jurisdiction, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in the call.

The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code.

(b) The board may reject any bid. In the event all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed five thousand dollars ($5,000), or the work consists of channel protection, maintenance, or emergency work, the board may have the work done by force account without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). In the event that no proposals are received, or if only one responsive proposal is received, the board may negotiate a contract for construction or performance of the work or improvement or substantially similar work or improvement. However, if only one responsive proposal is received, the contract must be negotiated with the bidder.

(c) The agency may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account.

(d) Sections 4300 to 4305, inclusive, of the Government Code do not apply to the agency's Middle Fork American River Project.

(e) This section applies to all proposals or contracts whether or not received or entered into prior to the effective date of the amendment of this provision made at the 1963 Regular Session of the Legislature.

SEC. 14. Section 21511 of the Public Contract Code is amended to read:

21511. (a) All contracts for any improvement or unit of work, when the cost according to the estimate of the engineer will exceed fifty thousand dollars ($50,000), shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the agency, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in the call. The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code. The board may reject any and all bids.

(b) In the event all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed ten thousand dollars ($10,000), or the work consists of channel protection, maintenance work, or emergency work, the board may have the work done by force account without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The agency may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account. However, materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased, if the cost exceeds fifty thousand dollars ($50,000), without advertising for bids and awarding the contract to the lowest responsible bidder.

SEC. 15. Section 21541 of the Public Contract Code is amended to read:

21541. (a) The Crestline-Lake Arrowhead Water Agency shall have power to prescribe methods for the construction of works and for the letting of contracts for the construction of works, structures, or equipment, or the performance or furnishing of labor, materials, or supplies, necessary or convenient for carrying out any of the purposes of this act or for the acquisition or disposal of any real or personal property. However, all contracts for the construction of any improvement or unit of work, when the cost, according to the estimate of the engineer, will exceed twenty-five thousand dollars ($25,000), shall be let to the lowest responsible bidder or bidders as

provided in this article. The board shall first determine whether the contract shall be let as a single unit or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the agency, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in the call.

The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code. The board may reject any bid.

(b) In the event all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed five thousand dollars ($5,000), or the work consists of channel protection, maintenance work, or emergency work, the board may have the work done by force account without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The agency may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account. However, materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased if the cost exceeds twenty-five thousand dollars ($25,000), without advertising for bids and awarding the contract to the lowest responsible bidder.

SEC. 16. Section 21621 of the Public Contract Code is amended to read:

21621. Any improvement or unit of work, when the cost, according to the estimate of the engineer, will exceed ten thousand dollars ($10,000), shall be done by contract and shall be let to the lowest responsible bidder or bidders in the manner provided in this article. The board shall first determine whether the contract shall be let as a single unit or shall be divided into severable parts, according to the best interests of the district. The board shall call for bids and advertise the call by publication pursuant to Section 6061.3 of the Government Code in a newspaper of general circulation published or circulated in the district, inviting sealed proposals for the construction or performance of the improvement or work before any contract is made. The call for bids shall state whether the work is to be performed as a unit or is to be divided into parts, as stated in the call. The board may let the work by single contract or it may divide the work into parts by separate contracts, as stated in the call.

SEC. 17. Section 65 of the Antelope Valley-East Kern Water Agency Law (Chapter 2146 of the Statutes of 1959) is amended to read:

Sec. 65. All powers, privileges, and duties vested in or imposed upon the Antelope Valley-East Kern Water Agency incorporated hereunder shall be exercised and performed by and through the board of directors. However, the exercise of any and all executive, administrative, and ministerial powers may be by the board of directors delegated and redelegated to any of the offices created hereby and by the board of directors acting hereunder.

The board of directors shall have power:

(1) To fix the time and place or places at which its regular meetings shall be held, and to provide for the calling and holding of special meetings.

(2) To fix the location of the principal place of business of the agency and the location of all offices and departments maintained hereunder.

(3) To prescribe by ordinance a system of business administration and to create any and all necessary offices and to establish and reestablish the powers and duties and compensation of all officers and employees and to require and fix the amount of all official bonds necessary for the protection of the funds and property of the agency.

(4) To prescribe by ordinance a system of civil service.

(5) To delegate and redelegate by ordinance to officers of the agency power to employ clerical, legal, and engineering assistants and labor, and under the conditions and restrictions as shall be fixed by the directors, power to bind the agency by contract.

(6) To prescribe a method of auditing and allowing or rejecting claims and demands.

(7) To prescribe methods for the construction of works and for the letting of contracts for the construction of works, structures, or equipment, or the performance or furnishing of labor, materials, or supplies, necessary or convenient for carrying out any of the purposes of this act or for the acquisition or disposal of any real or personal property. However, in cases where work is not to be done by the agency itself by force account, and the amount involved shall be fifty thousand dollars ($50,000), or more, any contract for the doing of the work shall be let to the lowest responsible bidder, after publication, in the manner prescribed by the board, of notices inviting bids therefor, subject to the right of the board to reject any and all proposals. Contracts, in writing or otherwise, for the acquisition or disposal of any real or personal property may be let without calling for competitive bids. The board may, from time to time, fix and establish the manner of calling for bids and letting contracts, but except as the procedure established by the board otherwise requires, all contracts may be entered into upon the terms and in the manner as the board may authorize.

(8) To fix the rates at which water should be sold, and to establish different rates for different classes or conditions of service. However, rates shall be uniform for like classes or conditions of service throughout the agency, but any special water rate fixed in accordance with terms and conditions of annexation fixed by the board under Section 82 or 83 hereof, shall be deemed to be a rate for a different class or condition of service. The board may, by resolution or ordinance, adopt regulations respecting the exercise of its powers and the carrying out of its purposes, and to fix and collect rates and charges for the providing or the availability of any service it is authorized to provide or make available for the sale, lease, or other disposition of water or other product of its works or operations, including standby charges and connection charges. A violation of a regulation of the agency adopted by ordinance is a misdemeanor punishable by fine not to exceed one hundred dollars ($100), imprisonment not to exceed one month, or by both the fine and imprisonment.

SEC. 18. Section 13 of the Fresno Metropolitan Flood Control Act (Chapter 503 of the Statutes of 1955) is amended to read:

Sec. 13. All contracts for materials, supplies, or for the construction or repair of works or improvements that has a contract price exceeding ten thousand dollars ($10,000) shall be let to the lowest responsible bidder after notice inviting bids is published in the district pursuant to Section 6061 of the Government Code, the publication to be not less than 10 days prior to the date set for the opening of bids. The contracts may be let by the board without public bidding where (1) they are entered into with any other public agency for governmental entity, (2) the contract price does not exceed ten thousand dollars ($10,000), or (3) an emergency threatening the public health, safety, and welfare has been declared by the board. Contracts for the maintenance or operation of district works or improvements may be negotiated when determined by the board to be in the public interest.

SEC. 19. Section 28 of the Kings River Conservation District Act (Chapter 931 of the Statutes of 1951) is amended to read:

Sec. 28. The board shall fix all water and power rates and all other charges for services or work done by the district and shall, through the general manager, collect the same. The board may establish suitable rules and regulations for the sale, distribution, and use of water and power and other services that may be rendered by the district and made therein and may provide that water, power, or services shall not be furnished to those against whom there are delinquent rates or charges.

The board may prescribe methods for the construction of works and the furnishing of materials, equipment, and supplies and for the letting of contracts therefor. However, any such contract requiring the expenditure of fifty thousand dollars ($50,000), or more, shall be subject to competitive bidding, after advertisement therefor, and

awarded to the lowest responsible bidder, except where the construction or work is to be done or performed by the district with its own forces upon force account.

CHAPTER 143

An act to amend Section 21166 of the Water Code, relating to water.

[Approved by Governor July 11, 1998. Filed with Secretary of State July 13, 1998.]

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

SECTION 1. Section 21166 of the Water Code is amended to read:

21166. Notwithstanding any other provision of law, a director, for sitting on the board or acting under its orders, shall receive both of the following:

(a) (1) Except as specified in paragraphs (2) and (3), compensation not to exceed one hundred dollars ($100) per day, not exceeding six days in any calendar month.

(2) In districts that produce or distribute electric power, one of the following methods of compensation:

(A) Compensation not to exceed one hundred dollars ($100) per day.

(B) A monthly salary of not to exceed six hundred dollars ($600) per month.

(C) Annual compensation not to exceed fifteen thousand dollars ($15,000). Any annual compensation pursuant to this subparagraph shall be fixed by the adoption of an ordinance pursuant to Sections 20203 to 20207, inclusive.

(3) Districts containing 500,000 acres or more are governed by Section 22840.

(b) Actual and necessary expenses when acting under the orders of the board.

CHAPTER 144

An act to add and repeal Section 20193 of the Public Contract Code, relating to municipal utility district contracts.

[Approved by Governor July 11, 1998. Filed with Secretary of State July 13, 1998.]

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

SECTION 1. (a) The Legislature finds and declares that the award of purchase contracts by some municipal utility districts under lowest cost competitive bid procedures may not be feasible for goods that are undergoing rapid technological changes or for the introduction of new technologies into district operations, and that in these circumstances it is in the public interest to consider other factors in the award of these contracts in order to meet the district's needs in the most value-effective manner.

(b) It is the intent of the Legislature that these districts utilize value-effective acquisition methods that are compatible with their short- and long-term fiscal needs in contracts relating to goods that are undergoing rapid technological changes or for the introduction of new technologies into district operations. A district should have authority to specify anticipated life cycle requirements that would become one of the criteria for procurement selection. There is a need for districts to enter into long-term contracts with annual cancellation and fund-out clauses, as required, to protect the district'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.

SEC. 2. Section 20193 is added to the Public Contract Code, to read:

20193. (a) Notwithstanding any other provision of law, a municipal utility district that serves electricity to more than 250,000 customers may procure information technology equipment, telecommunications equipment, metering equipment, microwave equipment, and other related electronic equipment and software in accordance with value-effective acquisition rules and regulations adopted by the district pursuant to this section.

(b) The rules and regulations adopted by the district shall, at a minimum, consider all of the following:

(1) Price and service level negotiation with respect to equipment and service contracts entered into in accordance with this article.

(2) Software, service, or equipment standards to be used for procurement selection. Standards may be developed to support the district's strategic program direction and shall support the goal of reducing the district's operating costs.

(3) Provision for protest and disclosure procedures.

(4) Other relevant factors.

(c) For purposes of this section, "value-effective acquisition" may be defined to include, but need not be limited to, any of the following:

(1) The operational cost or benefit that the district would incur if the bid or proposal is accepted.

(2) Quality of the product or service, or its technical competency.

(3) Reliability of delivery and implementation schedules.

(4) The maximum facilitation of data exchange and systems integration.

(5) Warranties, guarantees, and return policy.

(6) Vendor financial stability.

(7) Consistency of the proposed solution with the district's planning documents and announced strategic program direction.

(8) Quality and effectiveness of a business solution and approach.

(9) The vendor's industry and program experience.

(10) Prior record of vendor performance.

(11) Vendor expertise with engagements of similar scope and complexity.

(12) Extent and quality of the proposed participation and acceptance by all user groups.

(13) Proven development methodologies and tools.

(14) Innovative use of current technologies and quality results.

(15) Improvement in business operations responsiveness with regard to timeliness of providing service or products, and greater flexibility.

(d) Nothwithstanding Section 7550.5 of the Government Code, any district that utilizes value-effective acquisition methods pursuant to this section shall file, on or before January 1, 2005, with the Committees on Local Government of the Senate and the Assembly, a report on the cost-effectiveness of using these methods.

(e) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted on or before January 1, 2006, deletes or extends the date.

CHAPTER 145

An act to amend Sections 10234.5 and 10236.4 of the Business and Professions Code, relating to real estate, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 11, 1998. Filed with Secretary of State July 13, 1998.]

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

SECTION 1. Section 10234.5 of the Business and Professions Code is amended to read:

10234.5. In addition to the requirements of Section 10234, in the placing of any loan, a broker shall deliver or cause to be delivered conformed copies of any deed of trust to both the investor or lender and the borrower within a reasonable amount of time from the date of recording.

SEC. 2. Section 10236.4 of the Business and Professions Code is amended to read:

10236.4. (a) In compliance with Section 10235.5, every licensed real estate broker shall also display his or her license number on all advertisements where there is a solicitation for borrowers or potential investors. In addition, the broker shall disclose in any such advertisement the license information telephone number established by the department.

(b) The disclosures required by Sections 10232.4 and 10240 shall include the licensee's license number and the department's license information telephone number.

(c) This section shall become operative July 1, 1998.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

The delivery of residential mortgage loans would be negatively affected if this bill does not take effect immediately.

CHAPTER 146

An act to amend Sections 24353, 26857, 27361, 68085, 68085.5, 68547, 77200, 77201.1, 77204, 77205, 77205.5, 77207, 77209, 77212, and 77654 of, and to add Section 77201 to, the Government Code, and to amend Section 1463.001 of, and to add Section 1463.007 to, the Penal Code, relating to trial court funding, and making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 13, 1998. Filed with Secretary of State July 13, 1998.]

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

SECTION 1. Section 24353 of the Government Code is amended to read:

24353. Each officer of a county or judicial district authorized to collect money shall pay into the county treasury all money collected by him or her, or under his or her control, that is payable into the treasury in a timely manner, and shall remit fee, fine, and forfeiture data within 35 days after the end of the month in which they are collected to the county auditor and treasurer in the form they require. No officer who collects money as described in this section shall be required to accept payment in coin. If the county auditor finds that an officer of the county or an officer of the court has failed to comply with the requirements for payment of moneys pursuant to this section or Section 68101, which directly results in the assessment of a financial penalty pursuant to Section 68085, the county department or local court that failed to comply shall reimburse the county general fund in an amount equal to the actual penalty. With

the approval of the treasurer as provided in Section 27080.1, each depositing officer may deposit directly into the treasurer's active account all money payable into the county treasury.

SEC. 2. Section 26857 of the Government Code is amended to read:

26857. No fee shall be charged by the clerk for service rendered to a defendant in any criminal action or, to the petitioner in any adoption proceeding except as provided in Section 103730 of the Health and Safety Code, nor shall any fees be charged for any service to the state or for any proceeding brought pursuant to Section 7841 of the Family Code to declare a minor free from parental custody or control. No fee shall be charged by the clerk for service rendered to any municipality or county in the state, or to the state or national government, nor for any service relating thereto.

SEC. 3. Section 27361 of the Government Code is amended to read:

27361. (a) The fee for recording and indexing every instrument, paper, or notice required or permitted by law to be recorded is four dollars ($4) for recording the first page and three dollars ($3) for each additional page, except the recorder may charge additional fees as follows:

(1) If the printing on printed forms is spaced more than nine lines per vertical inch or more than 22 characters and spaces per inch measured horizontally for not less than 3 inches in one sentence, the recorder shall charge one dollar ($1) extra for each page or sheet on which printing appears excepting, however, the extra charge shall not apply to printed words which are directive or explanatory in nature for completion of the form or on vital statistics forms. Fees collected under this paragraph are not subject to subdivision (b) or (c).

(2) If a page or sheet does not conform with the dimensions described in subdivision (a) of Section 27361.5, the recorder shall charge three dollars ($3) extra per page or sheet of the document. The extra charge authorized under this paragraph shall be available solely to support, maintain, improve, and provide for the full operation for modernized creation, retention, and retrieval of information in each county's system of recorded documents. Fees collected under this paragraph are not subject to subdivision (b) or (c).

(b) One dollar ($1) of each three dollar ($3) fee for each additional page shall be deposited in the county general fund.

(c) Notwithstanding Section 68085, one dollar ($1) for recording the first page and one dollar ($1) for each additional page shall be available solely to support, maintain, improve, and provide for the full operation for modernized creation, retention, and retrieval of information in each county's system of recorded documents.

SEC. 4. Section 68085 of the Government Code is amended to read:

68085. (a) (1) There is hereby established the Trial Court Trust Fund, the proceeds of which shall be apportioned at least quarterly for the purpose of funding trial court operations, as defined in Section 77003. In no event shall apportionment payments exceed 30 percent of the total annual apportionment to the Trial Court Trust Fund for state trial court funding in any 90-day period.

(2) The apportionment payments shall be made by the Controller. For fiscal year 1997–98, the Controller shall make the first apportionment payment within 10 days of the operative date of this section. The final payment from the Trial Court Trust Fund for each fiscal year shall be made on or before August 31 of the subsequent fiscal year.

(3) If apportionment payments are made on a quarterly basis, the payments shall be on July 15, October 15, January 15, and April 15. In addition to quarterly payments, a final payment from the Trial Court Trust Fund for each fiscal year may be made on or before August 31 of the subsequent fiscal year.

(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) (1) Except as specified in subdivision (d), this section applies to all fees collected pursuant to Section 116.230 of the Code of Civil Procedure and Sections 26820.4, 26823, 26826, 26826.01, 26827, 26827.4, 26830, 26832.1, 26833.1, 26835.1, 26836.1, 26837.1, 26838, 26850.1, 26851.1, 26852.1, 26853.1, 26855.4, 26862, 27081.5, 68086, 72055, 72056, 72056.01, and 72060.

(2) If any of the fees provided for in this subdivision are partially waived by court order, and the fee is to be divided between the Trial Court Trust Fund and any other fund, the amount of the partial waiver shall be deducted from the amount to be distributed to each fund in the same proportion as the amount of each distribution bears to the total amount of the fee.

(3) Any amounts transmitted by a county to the Controller for deposit into the Trial Court Trust Fund from fees collected pursuant to Section 27361 between January 1, 1998, and the effective date of this paragraph shall be credited against the total amount the county is required to pay to the state pursuant to paragraph (2) of subdivision (b) of Section 77201 for the 1997–98 fiscal year.

(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. This section also does not apply to fees collected pursuant to subdivisions (a) and (c) of Section 27361.

(e) Notwithstanding any other provision of law, no agency shall take action to change the amounts allocated to any of the above funds.

(f) Before making any apportionments under this section, the Controller shall deduct, from the annual appropriation for that purpose, the actual administrative costs that will be incurred under this section. Costs reimbursed under this section shall be determined on an annual basis in consultation with the Judicial Council.

(g) Any amounts required to be transmitted by a county or city and county to the state pursuant to this section shall be remitted to the Controller no later than 45 days after the end of the month in which the fees were collected. This remittance shall be accompanied by a remittance advice identifying the collection month and the appropriate account in the Trial Court Trust Fund to which it is to be deposited. Any remittance which is not made by the county or city and county in accordance with this section shall be considered delinquent, and subject to the penalties specified in this section.

(h) Upon receipt of any delinquent payment, the Controller shall calculate a penalty on any delinquent payment by multiplying the amount of the delinquent payment at a daily rate equivalent to 1 $^{1}/_{2}$ percent per month for the number of days the payment is delinquent. Notwithstanding Section 77009, any penalty on a delinquent payment that a court is required to reimburse to a county's general fund pursuant to Section 24353 shall be paid from the Trial Court Operations Fund for that court.

(i) Penalty amounts calculated pursuant to subdivision (h) shall be paid by the county to the Trial Court Trust Fund no later than 45 days after the end of the month in which the penalty was calculated.

(j) The Trial Court Trust Fund shall be invested in the Surplus Money Investment Fund and all interest earned shall be allocated to the Trial Court Trust Fund semiannually and shall be allocated among the courts in accordance with the requirements of subdivision (a). The specific allocations shall be specified by the Judicial Council, based upon recommendations from the Trial Court Budget Commission.

SEC. 5. Section 68085.5 of the Government Code is amended to read:

68085.5. (a) Notwithstanding Section 68085 and pursuant to appropriation by the Legislature, the Judicial Council may allocate unexpended funds in the Trial Court Trust Fund, or any other funds available for allocation, for the 1997–98 fiscal year for trial court facilities renovation, repair, and maintenance projects approved by the Judicial Council subject to the conditions in subdivision (d). The amount allocated pursuant to this section shall not exceed five million dollars ($5,000,000).

(b) The Judicial Council is authorized to allocate moneys from the funds specified in subdivision (a) for such projects as may be

approved by the Judicial Council, and shall be paid to the county therefor by the Controller.

(c) Notwithstanding Sections 68085 and 77205, the amount which would otherwise be retained by the county pursuant to Section 77205 shall instead be deposited in the Trial Court Trust Fund, up to the amount of any allocation made pursuant to this section.

(d) Projects approved by the Judicial Council pursuant to this section shall meet the following conditions:

(1) The county has an environmental impact review report certified if it is required for the project.

(2) The county board of supervisors has completed and approved the plans and specifications for the project.

(3) The county has completed the architectural design through a request for proposal process for the project.

(4) The county has completed any update of the justice facility master plan that is necessary.

(5) The county has already completed a competitive bid process for the project.

(6) The county has completed any and all land acquisition, including all necessary condemnation and relocation proceedings, for the project.

(7) The county has received Board of Corrections approval for any holding facilities.

(e) Subdivisions (a), (b), and (d) shall become inoperative on July 1, 2001. Subdivision (c) shall become inoperative when all funds allocated to any county pursuant to this section have been repaid.

SEC. 5.5. Section 68547 of the Government Code is amended to read:

68547. (a) For the purposes of this article, a judge or justice is deemed to serve or sit under assignment on each day during which it is necessary for him or her on account of the assignment to serve in a substantial way on the court to which assigned, to travel to or from such court, or to be absent from his or her residence. If a judge so serves under assignment in one or more courts during all days other than Saturdays, Sundays, and holidays in any period of 30 or more consecutive days (inclusive of Saturdays, Sundays, and holidays), he or she shall be deemed also to have served or sat in such court or courts on all Saturdays, Sundays, and holidays during or immediately preceding that period.

If a judge who serves his or her court on a part-time basis has completed the business of the home court for all days affected by any assignment, compensation attributable to the home court shall only be deducted from the amounts to be paid pursuant to Section 68540.7 for the days the judge is serving on assignment to the extent necessary to limit the assigned judge's total judicial compensation for the month to the amount earned by a regular judge of the court to which the judge is assigned.

(b) This section shall become operative on January 1, 1999.

SEC. 6. Section 77200 of the Government Code is amended to read:

77200. On and after July 1, 1997, the state shall assume sole responsibility for the funding of court operations, as defined in Section 77003 and Rule 810 of the California Rules of Court as it read on July 1, 1996. In meeting this responsibility, the state shall do all of the following:

(a) Deposit in the State Trial Court Trust Fund, for subsequent allocation to or for the trial courts, all county funds remitted to the state pursuant to Section 77201 until June 30, 1998, and pursuant to Section 77201.1, thereafter.

(b) Be responsible for the cost of court operations incurred by the trial courts in the 1997–98 fiscal year and subsequent fiscal years.

(c) Allocate funds to the individual trial courts pursuant to an allocation schedule adopted by the Judicial Council, but in no case shall the amount allocated to the trial courts of a county be less than the amount remitted to the state by the county in which those courts are located pursuant to paragraphs (1) and (2) of subdivision (b) of Section 77201 until June 30, 1998, and pursuant to paragraphs (1) and (2) of subdivision (b) of Section 77201.1, thereafter.

(d) The Judicial Council shall submit its allocation schedule to the Controller at least 15 days before the due date of any allocation.

SEC. 7. Section 77201 is added to the Government Code, to read:

77201. (a) Commencing on July 1, 1997, no county shall be responsible for funding court operations, as defined in Section 77003 and Rule 810 of the California Rules of Court as it read on July 1, 1996.

(b) In the 1997–98 fiscal year, each county shall remit to the state in installments due on January 1, April 1, and June 30, the amounts specified in paragraphs (1), (2), and (3), as follows:

(1) Except as otherwise specifically provided in this section, each county shall remit to the state the amount listed below which is based on an amount expended by the respective county for court operations during the 1994–95 fiscal year:

Jurisdiction	Amount
Alameda	$ 42,045,093
Alpine	46,044
Amador	900,196
Butte	2,604,611
Calaveras	420,893
Colusa	309,009
Contra Costa	21,634,450
Del Norte	780,786
El Dorado	3,888,927
Fresno	13,355,025
Glenn	371,607

Humboldt	2,437,196
Imperial	2,055,173
Inyo	546,508
Kern	16,669,917
Kings	2,594,901
Lake	975,311
Lassen	517,921
Los Angeles	291,872,379
Madera	1,242,968
Marin	6,837,518
Mariposa	177,880
Mendocino	1,739,605
Merced	1,363,409
Modoc	114,249
Mono	271,021
Monterey	5,739,655
Napa	2,866,986
Nevada	815,130
Orange	76,567,372
Placer	6,450,175
Plumas	413,368
Riverside	32,524,412
Sacramento	40,692,954
San Benito	460,552
San Bernardino	31,516,134
San Diego	77,637,904
San Francisco	31,142,353
San Joaquin	9,102,834
San Luis Obispo	6,840,067
San Mateo	20,383,643
Santa Barbara	10,604,431
Santa Clara	49,876,177
Santa Cruz	6,449,104
Shasta	3,369,017
Sierra	40,477
Siskiyou	478,144
Solano	10,780,179
Sonoma	9,273,174
Stanislaus	8,320,727
Sutter	1,718,287

Tehama	1,352,370
Trinity	620,990
Tulare	6,981,681
Tuolumne	1,080,723
Ventura	16,721,157
Yolo	2,564,985
Yuba	842,240

(2) Except as otherwise specifically provided in this section, each county shall also remit to the state the amount listed below which is based on an amount of fine and forfeiture revenue remitted to the state pursuant to Sections 27361 and 76000 of this code, Sections 1463.001, 1463.07, and 1464 of the Penal Code, and Sections 42007, 42007.1, and 42008 of the Vehicle Code during the 1994–95 fiscal year:

Jurisdiction	Amount
Alameda	$12,769,882
Alpine	58,757
Amador	377,005
Butte	1,437,671
Calaveras	418,558
Colusa	485,040
Contra Costa	5,646,329
Del Norte	727,852
El Dorado	1,217,093
Fresno	4,505,786
Glenn	455,389
Humboldt	1,161,745
Imperial	1,350,760
Inyo	878,321
Kern	6,688,247
Kings	1,115,601
Lake	424,070
Lassen	513,445
Los Angeles	89,771,310
Madera	1,207,998
Marin	2,700,045
Mariposa	135,457
Mendocino	948,837
Merced	2,093,355
Modoc	122,156
Mono	415,136

Monterey	3,855,457
Napa	874,219
Nevada	1,378,796
Orange	24,830,542
Placer	2,182,230
Plumas	225,080
Riverside	13,328,445
Sacramento	7,548,829
San Benito	346,451
San Bernardino	11,694,120
San Diego	21,410,586
San Francisco	5,925,950
San Joaquin	4,753,688
San Luis Obispo	2,573,968
San Mateo	7,124,638
Santa Barbara	4,094,288
Santa Clara	15,561,983
Santa Cruz	2,267,327
Shasta	1,198,773
Sierra	46,778
Siskiyou	801,329
Solano	3,757,059
Sonoma	2,851,883
Stanislaus	2,669,045
Sutter	802,574
Tehama	761,188
Trinity	137,087
Tulare	2,299,167
Tuolumne	440,496
Ventura	6,129,411
Yolo	1,516,065
Yuba	402,077

(3) The installment due on January 1 shall be for 25 percent of the amounts specified in paragraphs (1) and (2). The installments due on April 1 and June 30 shall be prorated uniformly to reflect any adjustments made by the Department of Finance, as provided in this section. If no adjustment is made by April 1, 1998, the April 1, 1998 installment shall be for 15 percent of the amounts specified in paragraphs (1) and (2). If no adjustment is made by June 30, 1998, the June 30, 1998, installment shall be for the balance of the amount due pursuant to this paragraph.

(4) Except as otherwise specifically provided in this section, county remittances specified in paragraphs (1) and (2) shall not be increased in subsequent years.

(5) Any change in statute or rule of court that either reduces the bail schedule or redirects or reduces a county's portion of fee, fine, and forfeiture revenue to an amount that is less than (A) the fees, fines, and forfeitures retained by that county and (B) the county's portion of fines and forfeitures transmitted to the state in the 1994–95 fiscal year, shall reduce that county's remittance specified in paragraph (2) of this subdivision by an equal amount. Nothing in this paragraph is intended to limit judicial sentencing discretion.

(c) The Department of Finance shall adjust the amount specified in paragraph (1) of subdivision (b) that a county is required to submit to the state, pursuant to the following procedures:

(1) A county may submit a declaration to the Department of Finance, no later than February 15, 1998, that declares that (A) the county incorrectly reported county costs as court operations costs as defined in Section 77003 in the 1994–95 fiscal year, and that incorrect report resulted in the amount the county is required to submit to the state pursuant to paragraph (1) of subdivision (b) being too high, (B) the amount the county is required to submit to the state pursuant to paragraph (1) of subdivision (b) includes amounts that were specifically appropriated, funded and expended by a county or city and county during fiscal year 1994–95 to fund extraordinary one-time expenditures for court operation costs, or (C) the amount the county is required to submit to the state pursuant to paragraph (1) of subdivision (b) includes expenses that were funded from grants or subventions from any source, for court operation costs that could not have been funded without those grants or subventions being available. A county submitting that declaration shall concurrently transmit a copy of the declaration to the courts of that county. The trial courts in a county that submits that declaration shall have the opportunity to comment to the Department of Finance on the validity of the statements in the declaration. Upon receipt of the declaration and comments, if any, the Department of Finance shall determine and certify which costs identified in the county's declaration were incorrectly reported as court operation costs or were expended for extraordinary one-time expenditures or funded from grants or subventions in the 1994–95 fiscal year. The Department of Finance shall reduce the amount a county must submit to the state pursuant to paragraph (1) of subdivision (b) by an amount equal to the amount the department certifies was incorrectly reported as court operations costs or were expended for extraordinary one-time expense or funded from grants or subventions in the 1994–95 fiscal year. If a county disagrees with the Department of Finance's failure to verify the facts in the county's declaration and reduce the amount the county is required to submit to the state pursuant to paragraph (1) of subdivision (b), the county

may request that the Controller conduct an audit to verify the facts in the county's declaration. The Controller shall conduct the requested audit, which shall be at the requesting county's expense. If the Controller's audit verifies the facts in the county's declaration, the department shall reduce the amount the county is required to submit to the state pursuant to paragraph (1) of subdivision (b) by an amount equal to the amount verified by the Controller's audit and the state shall reimburse the requesting county for the cost of the audit. A county shall provide, at no charge to the court, any service for which the amount in paragraph (1) of subdivision (b) was adjusted downward, if the county is required to provide that service at no cost to the court by any other provision of law.

(2) A court may submit a declaration to the Department of Finance, no later than February 15, 1998, that the county failed to report county costs as court operations costs as defined in Section 77003 in the 1994–95 fiscal year, and that this failure resulted in the amount the county is required to submit to the state pursuant to paragraph (1) of subdivision (b) being too low. A court submitting that declaration shall concurrently transmit a copy of the declaration to the county. A county shall have the opportunity to comment to the Department of Finance on the validity of statements in the declaration and comments, if any. Upon receipt of the declaration, the Department of Finance shall determine and certify which costs identified in the court's declaration should have been reported by the county as court operation costs in the 1994–95 fiscal year and whether this failure resulted in the amount the county is required to submit to the state pursuant to paragraph (1) of subdivision (b) being too low. The Department of Finance shall notify the county, trial courts in the county, and the Judicial Council of its certification and decision. Within 30 days, or on or before June 30, 1998, whichever is later, the county shall either notify the Department of Finance, trial courts in the county, and the Judicial Council that the county shall assume responsibility for the costs the county has failed to report or that the department shall increase the amount the county is required to submit to the state pursuant to paragraph (1) of subdivision (b) by an amount equal to the amount certified by the department. A county shall not be required to continue to provide services for which the amount in paragraph (1) of subdivision (b) was adjusted upward.

(3) A county shall submit a declaration to the Department of Finance, no later than February 15, 1998, that the amount it is required to submit to the state pursuant to paragraph (1) of subdivision (b) either includes or does not include the costs for local judicial benefits which are court operation costs as defined in Section 77003 and Rule 810 of the California Rules of Court. The trial courts in a county that submits such a declaration shall be given a copy of the declaration and the opportunity to comment on the validity of the statements in the declaration. The Department of Finance shall verify the facts in the county's declaration and comments, if any,

within 30 days of receipt of the declaration and, upon verification that the amount the county is required to submit to the state includes the costs of local judicial benefits, the department shall reduce the amount the county is required to submit to the state pursuant to paragraph (1) of subdivision (b) by an amount equal to the cost of those judicial benefits, in which case the county shall continue to be responsible for the cost of those benefits. If a county disagrees with the Department of Finance's failure to verify the facts in the county's declaration and reduce the amount the county is required to submit to the state pursuant to paragraph (1) of subdivision (b), the county may request that the Controller conduct an audit to verify the facts in the county's declaration. The Controller shall conduct the requested audit which shall be at the requesting county's expense. If the Controller's audit verifies the facts in the county's declaration, the department shall reduce the amount the county is required to submit to the state pursuant to paragraph (1) of subdivision (b) by an amount equal to the amount verified by the Controller's audit and the state shall reimburse the requesting county for the cost of the audit.

(d) Nothing in this section is intended to relieve a county of the responsibility to provide necessary and suitable court facilities pursuant to Section 68073.

(e) Nothing in this section is intended to relieve a county of the responsibility for justice-related expenses not included in Section 77003 which are otherwise required of the county by law, including, but not limited to, indigent defense representation and investigation, and payment of youth authority charges.

(f) The Department of Finance shall notify the county, trial courts in the county, and Judicial Council of the final decision and resulting adjustment.

(g) On or before February 15, 1998, each county shall submit to the Department of Finance a report of the amount it expended for trial court operations as defined in Section 77003 and Rule 810 of the California Rules of Court as it read on July 1, 1996, between the start of the 1997–98 fiscal year and the effective date of this section. The department shall reduce the amount a county is required to remit to the state pursuant to paragraph (1) of subdivision (b) in the 1997–98 fiscal year by an amount equal to the amount a county expended for court operation costs between the start of the 1997–98 fiscal year and the effective date of this section. The department shall also reduce the amount a county is required to remit to the state pursuant to paragraph (2) of subdivision (b) in the 1997–98 fiscal year by an amount equal to the amount of fine and forfeiture revenue that a county remitted to the state between the start of the 1997–98 fiscal year and the effective date of this section. The department shall notify the county, the trial courts of the county, and the Judicial Council of the amount it has reduced a county's obligation to remit to the state pursuant to this subdivision.

(h) In no event shall a county be required to pay an amount that exceeds the amounts required to be paid in subdivision (b), as adjusted by the Department of Finance, excluding any penalties imposed pursuant to Section 68085. If the aggregate payments received from a county, excluding any penalties imposed pursuant to Section 68085, exceed the amount the county is required to pay in subdivision (b), as adjusted by the Department of Finance, the Controller shall refund to the county from the Trial Court Trust Fund an amount equal to the amount of the excess payment as determined by the Department of Finance. The Controller shall notify the Judicial Council of any payments made to counties pursuant to this subdivision.

SEC. 8. Section 77201.1 of the Government Code is amended to read:

77201.1. (a) Commencing on July 1, 1997, no county shall be responsible for funding court operations, as defined in Section 77003 and Rule 810 of the California Rules of Court as it read on July 1, 1996.

(b) Commencing in the 1998–99 fiscal year, and each fiscal year thereafter, each county shall remit to the state in four equal installments due on October 1, January 1, April 1, and July 1, the amounts specified in paragraphs (1) and (2), as follows:

(1) Except as otherwise specifically provided in this section, each county shall remit to the state the amount listed below which is based on an amount expended by the respective county for court operations during the 1994–95 fiscal year:

Jurisdiction	Amount
Alameda	$ 29,554,276
Alpine	–
Amador	–
Butte	2,188,561
Calaveras	–
Colusa	–
Contra Costa	14,553,828
Del Norte	–
El Dorado	2,642,828
Fresno	11,220,322
Glenn	–
Humboldt	2,023,135
Imperial	1,855,173
Inyo	–
Kern	12,237,358
Kings	1,981,326
Lake	–

Lassen	–
Los Angeles	200,596,408
Madera	1,042,967
Marin	4,727,855
Mariposa	–
Mendocino	1,539,605
Merced	1,163,409
Modoc	–
Mono	–
Monterey	5,539,656
Napa	2,131,045
Nevada	615,130
Orange	52,341,395
Placer	3,928,394
Plumas	–
Riverside	21,226,163
Sacramento	25,798,064
San Benito	–
San Bernardino	22,536,554
San Diego	50,764,874
San Francisco	20,731,433
San Joaquin	7,129,952
San Luis Obispo	4,447,550
San Mateo	13,179,481
Santa Barbara	7,516,435
Santa Clara	32,910,617
Santa Cruz	4,634,736
Shasta	2,750,564
Sierra	–
Siskiyou	–
Solano	6,975,509
Sonoma	6,724,289
Stanislaus	5,872,184
Sutter	1,388,808
Tehama	–
Trinity	–
Tulare	5,252,388
Tuolumne	–
Ventura	11,392,454

Yolo	2,364,984
Yuba	–

(2) Except as otherwise specifically provided in this section, each county shall also remit to the state the amount listed below which is based on an amount of fine and forfeiture revenue remitted to the state pursuant to Sections 27361 and 76000 of this code, Sections 1463.001, 1463.07, and 1464 of the Penal Code, and Sections 42007, 42007.1, and 42008 of the Vehicle Code during the 1994–95 fiscal year:

Jurisdiction	Amount
Alameda	$ 9,912,156
Alpine	58,757
Amador	265,707
Butte	1,217,052
Calaveras	310,331
Colusa	397,468
Contra Costa	4,168,194
Del Norte	553,730
El Dorado	1,028,349
Fresno	3,695,633
Glenn	360,974
Humboldt	1,025,583
Imperial	1,144,661
Inyo	614,920
Kern	5,530,972
Kings	982,208
Lake	375,570
Lassen	430,163
Los Angeles	71,002,129
Madera	1,042,797
Marin	2,111,712
Mariposa	135,457
Mendocino	755,680
Merced	1,733,156
Modoc	104,729
Mono	415,136
Monterey	3,330,125
Napa	721,437
Nevada	1,220,686
Orange	19,572,810
Placer	1,243,754

Plumas	193,772
Riverside	7,681,744
Sacramento	6,440,273
San Benito	302,324
San Bernardino	9,092,380
San Diego	16,166,735
San Francisco	4,046,107
San Joaquin	3,562,835
San Luis Obispo	2,036,515
San Mateo	4,831,497
Santa Barbara	3,277,610
Santa Clara	11,597,583
Santa Cruz	1,902,096
Shasta	1,044,700
Sierra	42,533
Siskiyou	615,581
Solano	3,011,833
Sonoma	2,316,999
Stanislaus	1,855,169
Sutter	678,681
Tehama	640,303
Trinity	137,087
Tulare	1,840,422
Tuolumne	361,665
Ventura	4,575,349
Yolo	1,158,629
Yuba	318,242

(3) Except as otherwise specifically provided in this section, county remittances specified in paragraphs (1) and (2) shall not be increased in subsequent years.

(4) The amount a county is required to remit pursuant to paragraph (1) shall be adjusted by the amount equal to any adjustment resulting from the procedures in subdivision (c) of Section 77201 as it read on June 29, 1998.

(5) Any change in statute or rule of court that either reduces the bail schedule or redirects or reduces a county's portion of fee, fine, and forfeiture revenue to an amount that is less than (A) the fees, fines, and forfeitures retained by that county and (B) the county's portion of fines and forfeitures transmitted to the state in the 1994–95 fiscal year, shall reduce that county's remittance specified in paragraph (2) of this subdivision by an equal amount. Nothing in this paragraph is intended to limit judicial sentencing discretion.

(c) Nothing in this section is intended to relieve a county of the responsibility to provide necessary and suitable court facilities pursuant to Section 68073.

(d) Nothing in this section is intended to relieve a county of the responsibility for justice-related expenses not included in Section 77003 which are otherwise required of the county by law, including, but not limited to, indigent defense representation and investigation, and payment of youth authority charges.

(e) County base-year remittance requirements specified in paragraph (2) of subdivision (b) incorporate specific reductions to reflect those instances where the Department of Finance has determined that a county's remittance to both the General Fund and the Trial Court Trust Fund during the 1994–95 fiscal year exceeded the aggregate amount of state funding from the General Fund and the Trial Court Trust Fund. The amount of the reduction was determined by calculating the difference between the amount the county remitted to the General Fund and the Trial Court Trust Fund and the aggregate amount of state support from the General Fund and the Trial Court Trust Fund allocated to the county's trial courts. In making its determination of whether a county is entitled to a reduction pursuant to that paragraph, the Department of Finance subtracted from county revenues remitted to the state, all moneys derived from the fee required by Section 42007.1 of the Vehicle Code and the parking surcharge required by subdivision (c) of Section 76000.

(f) Notwithstanding subdivision (e), the Department of Finance shall not reduce a county's base-year remittance requirement, as specified in paragraph (2) of subdivision (b), if the county's trial court funding allocation was modified pursuant to the amendments to the allocation formula set forth in paragraph (4) of subdivision (d) of Section 77200, as amended by Chapter 2 of the Statutes of 1993, to provide a stable level of funding for small county courts in response to reductions in the State General Fund support for the trial courts.

(g) This section shall become operative on July 1, 1998.

SEC. 9. Section 77202.5 is added to the Government Code, to read:

77202.5. (a) In any option year commencing with the 1994–95 fiscal year, in which the net county benefit for the County of Ventura is less than the sum of five million two hundred sixty-two thousand five hundred dollars ($5,262,500), adjusted each fiscal year by the percentage change in the California per capita personal income, the Controller shall allocate to the county a special supplemental subvention of vehicle license fee revenues pursuant to Section 11005 of the Revenue and Taxation Code in an amount equal to the amount by which the net county benefits is less than five million two hundred sixty-two thousand five hundred dollars ($5,262,500), as adjusted for the applicable fiscal year.

(b) For purposes of this section, the net county benefit for each fiscal year beginning in the 1994–95 fiscal year is the sum of the revenues received by the county from the state for trial court operations in Ventura County for that fiscal year reduced by the amount subtracted from the county's proportionate share of property tax revenue pursuant to the Tax Equity Allocation (TEA) formula pursuant to Section 98.02 of the Revenue and Taxation Code for that fiscal year.

(c) For purposes of this section:

(1) "Revenues received for trial court operations" means payments received in accordance with paragraph (1) of subdivision (a) of Section 68085 and Section 77205.1, or their successor code provisions.

(2) "The percentage change in the California per capita personal income" means the annual amount computed and reported to the county by the Department of Finance in accordance with Section 7901.

SEC. 9.5. Section 77204 of the Government Code is amended to read:

77204. (a) The Judicial Council shall have the authority to allocate funds appropriated annually to the State Trial Court Trust Fund for the purpose of paying legal costs resulting from lawsuits or claims involving the state, the Judicial Council, or a member or employee of the Judicial Council or Administrative Office of the Court and arising out of (1) the actions or conduct of a trial court, trial court bench officer, or trial court employee, (2) a challenge to a California rule of court, form, local trial court rule, or policy, or (3) the actions or conduct of the Judicial Council or the Administrative Office of the Court affecting one or more trial courts and for which the state is named as a defendant or alleged to be the responsible party.

(b) For the purposes of this section, legal costs are defined to be (1) the state's or Judicial Council's portion of any agreement, settlement decree, stipulation, or stipulated judgment; (2) the state's or Judicial Council's portion of any payment required pursuant to a judgment or order; or (3) attorneys' fees, legal assistant fees, and any litigation costs and expenses, including, but not limited to, experts' fees incurred by the state or Judicial Council.

SEC. 10. Section 77205 of the Government Code is amended to read:

77205. (a) Notwithstanding any other provision of law, in any year in which a county collects fee, fine, and forfeiture revenue for deposit into the county general fund pursuant to Sections 1463.001 and 1464 of the Penal Code, Sections 42007, 42007.1, and 42008 of the Vehicle Code, and Sections 27361, 29550, and 76000 of the Government Code that would have been deposited into the General Fund pursuant to these sections as they read on December 31, 1997, and pursuant to Section 1463.07 of the Penal Code, and that exceeds

the amount specified in paragraph (2) of subdivision (b) of Section 77201 for the 1997–98 fiscal year, and paragraph (2) of subdivision (b) of Section 77201.1 for the 1998–99 fiscal year, and thereafter, the excess amount shall be divided between the county or city and county and the state, with 50 percent of the excess transferred to the state for deposit in the Trial Court Improvement Fund and 50 percent of the excess being deposited into the county general fund. For the purpose of this subdivision, fee, fine, and forfeiture revenue shall only include revenue that would otherwise have been deposited in the General Fund prior to January 1, 1998.

(b) Any amounts required to be distributed to the state pursuant to subdivision (a) shall be remitted to the Controller no later than 45 days after the end of the fiscal year in which those fees, fines, and forfeitures were collected. This remittance shall be accompanied by a remittance advice identifying the quarter of collection and stating that the amount should be deposited in the Trial Court Improvement Fund.

(c) Notwithstanding subdivision (a), the following counties whose base-year remittance requirement was reduced pursuant to subdivision (c) of Section 77201.1 shall not be required to split their annual fee, fine, and forfeiture revenues as provided in this section until such revenues exceed the following amounts:

County	Amount
Placer	$ 1,554,677
Riverside	11,028,078
San Joaquin	3,694,810
San Mateo	5,304,995
Ventura	4,637,294

SEC. 11. Section 77207 of the Government Code is amended to read:

77207. The Legislature shall appropriate trial court funding. The Controller shall apportion trial court funding payments to the courts as provided in Section 68085 pursuant to an allocation schedule adopted by the Judicial Council.

SEC. 12. Section 77209 of the Government Code is amended to read:

77209. (a) There is in the State Treasury the Trial Court Improvement Fund.

(b) The Judicial Council shall reserve funds for the following projects by allocating 1 percent of the annual appropriation for the trial courts to the Trial Court Improvement Fund as follows:

(1) At least one-half of 1 percent of the total appropriation for trial court operations shall be set aside as a reserve which shall not be allocated prior to March 15 of each year unless allocated to a court or courts for urgent needs.

(2) Up to one-quarter of 1 percent of the total appropriation for trial court operations may be allocated from the fund to courts which have fully implemented the requirements of Rule 991 of the California Rules of Court, as it read on July 1, 1996, and which meet additional criteria as may be established by the Judicial Council.

(3) Up to one-quarter of 1 percent of the total appropriation for trial court operations may be allocated from the fund for statewide projects or programs for the benefit of the trial courts.

(c) Any funds in the Trial Court Improvement Fund that are unencumbered at the end of the fiscal year shall be reappropriated to the Trial Court Improvement Fund for the following fiscal year.

(d) Moneys deposited in the Trial Court Improvement Fund shall be placed in an interest bearing account. Any interest earned shall accrue to the fund and shall be disbursed pursuant to subdivision (e).

(e) Moneys deposited in the Trial Court Improvement Fund may be disbursed for purposes of this section.

(f) Moneys deposited in the Trial Court Improvement Fund pursuant to Section 68090.8 shall be allocated by the Judicial Council for automated recordkeeping system improvements pursuant to that section and in furtherance of Rule 991 of the California Rules of Court, as it read on July 1, 1996.

(g) Moneys deposited in the Trial Court Improvement Fund shall be administered by the Judicial Council. The Judicial Council may, with appropriate guidelines, delegate to the Administrative Office of the Courts the administration of the fund. Moneys in the fund may be expended to implement trial court projects approved by the Judicial Council. Expenditures may be made to vendors or individual trial courts that have the responsibility to implement approved projects.

(h) Notwithstanding other provisions of this section, the 2 percent automation fund moneys deposited in the Trial Court Improvement Fund pursuant to Section 68090.8 shall be allocated by the Judicial Council to individual courts of the counties for deposit in the Trial Court Operations Fund of the county from which the money was collected in an amount not less than the revenues collected in the local 2 percent automation funds in fiscal year 1994–95. The Judicial Council shall allocate the remainder of the moneys deposited in the Trial Court Improvement Fund as specified in this section.

For the purposes of this subdivision, the term "2 percent automation fund" means the fund established pursuant to Section 68090.8 as it read on June 30, 1996.

(i) The Judicial Council shall present an annual report to the Legislature on the use of the Trial Court Improvement Fund. The report shall include appropriate recommendations.

SEC. 13. Section 77212 of the Government Code is amended to read:

77212. (a) The State of California, the Counties of California, and the Trial Courts of California, recognize that a unique and

interdependent relationship has evolved between the courts and the counties over a sustained period of time. While it is the intent of this act to transfer all fiscal responsibility for the support of the trial courts from the counties to the State of California, it is imperative that the activities of the state, the counties, and the trial courts be maintained in a manner that ensures that services to the people of California not be disrupted. Therefore, to this end, during the 1997–98 fiscal year, commencing on July 1, 1997, counties shall continue to provide and courts shall continue to use, county services provided to the trial courts on July 1, 1997, including, but not limited to: auditor/controller services, coordination of telephone services, data-processing and information technology services, procurement, human resources services, affirmative action services, treasurer/tax collector services, county counsel services, facilities management, and legal representation. These services shall be provided to the court at a rate that shall not exceed the costs of providing similar services to county departments or special districts. If the cost was not included in the county base pursuant to paragraph (1) of subdivision (b) of Section 77201 or was not otherwise charged to the court prior to July 1, 1997, and were court operation costs as defined in Section 77003 in the fiscal year 1994–95, the court may seek adjustment of the amount the county is required to submit to the state pursuant to paragraph (2) of subdivision (c) of Section 77201.

(b) In fiscal year 1998–99 commencing on July 1, 1998, and thereafter the county may give notice to the court that the county will no longer provide a specific service except that the county shall cooperate with the court to ensure that a vital service for the court shall be available from the county or other entities that provide such services. The notice must be given at least 90 days prior to the end of the fiscal year and shall be effective only upon the first day of the succeeding fiscal year.

(c) In fiscal year 1998–99, commencing on July 1, 1998, and thereafter, the court may give notice to the county that the court will no longer use a specific county service. The notice shall be given at least 90 days prior to the end of the fiscal year and shall be effective only upon the first day of the succeeding fiscal year. However, for three years from the effective date of this section, a court shall not terminate a service that involved the acquisition of equipment, including, but not limited to, computer and data-processing systems, financed by a long-term financing plan whereby the county is dependent upon the court's continued financial support for a portion of the cost of the acquisition.

SEC. 14. Section 77654 of the Government Code is amended to read:

77654. (a) The task force shall be appointed on or before October 1, 1997.

(b) The task force shall meet and establish its operating procedures on or before January 1, 1998.

(c) The task force shall review all available court facility standards and make preliminary determinations of acceptable standards for construction, renovation, and remodeling of court facilities on or before July 1, 1998.

(d) The task force shall complete a survey of all trial and appellate court facilities in the state and report its findings to the Judicial Council, the Legislature, and the Governor in a first interim report on or before July 1, 1999. The report shall document all of the following:

(1) The state of existing court facilities.

(2) The need for new or modified court facilities.

(3) The currently available funding options for constructing or renovating court facilities, and the task force plan for the succeeding year.

(e) The task force shall submit a second interim report to the Judicial Council, the Legislature, and the Governor on or before July 1, 2000. The report shall document all of the following:

(1) The impact which creating additional judgeships has upon court facility and other justice system facility needs.

(2) The effects which trial court coordination and consolidation have upon court and justice system facilities needs.

(3) Administrative and operational changes which can reduce or mitigate the need for added court or justice system facilities.

(f) The task force shall submit a third interim report to the Judicial Council, the Legislature, and the Governor on or before January 1, 2001. The report shall include all of the following:

(1) Recommendations for specific funding responsibilities among the entities of government including full state responsibility, full county responsibility, or shared responsibility.

(2) A proposed transition plan if responsibility is to be changed.

(3) Recommendations regarding funding sources for court facilities and funding mechanisms to support court facilities.

(g) All interim reports shall be circulated for comment to the counties, the judiciary, the Legislature, and the Governor. The task force may also circulate these reports to users of the court facilities.

(h) The task force shall submit a final report to the Judicial Council, the Legislature, and the Governor on or before July 1, 2001. The report shall include all elements of the interim reports incorporating any changes recommended by the task force in response to comments received.

(i) Notwithstanding any other provision of law, during the period from July 1, 1997 to June 30, 2001, the board of supervisors of each county shall be responsible for providing suitable and necessary facilities for judicial officers and court support staff for judicial positions created prior to July 1, 1996, to the extent required by Section 68073. The board of supervisors of each county shall also be responsible for providing suitable and necessary facilities for judicial officers and court support staff for judgeships authorized by statutes

chaptered in 1996 to the extent required by Section 68073, provided that the board of supervisors agrees that new facilities are either not required or that the county is willing to provide funding for court facilities. Unless a court and a county otherwise mutually agree, the state shall assume responsibility for suitable and necessary facilities for judicial officers and support staff for any judgeships authorized during the period from January 1, 1998, to June 30, 2001.

SEC. 14.5. Section 1463.001 of the Penal Code is amended to read:

1463.001. Except as otherwise provided in this section, all fines and forfeitures imposed and collected for crimes other than parking offenses resulting from a filing in a court shall as soon as practicable after receipt thereof, be deposited with the county treasurer, and each month the total fines and forfeitures which have accumulated within the past month shall be distributed, as follows:

(a) The state penalties, county penalties, special penalties, service charges, and penalty allocations shall be transferred to the proper funds as required by law.

(b) The base fines shall be distributed, as follows:

(1) Any base fines which are subject to specific distribution under any other section shall be distributed to the specified funds of the state or local agency.

(2) Base fines resulting from county arrest not included in paragraph (1), shall be transferred into the proper funds of the county.

(3) Base fines resulting from city arrests not included in paragraph (1), an amount equal to the applicable county percentages set forth in Section 1463.002, as modified by Section 1463.28, shall be transferred into the proper funds of the county. Until July 1, 1998, the remainder of base fines resulting from city arrests shall be divided between each city and county, with 50 percent deposited to the county's general fund, and 50 percent deposited to the treasury of the appropriate city, and thereafter the remainder of base fines resulting from city arrests shall be deposited to the treasury of the appropriate city.

(4) In a county that had an agreement as of March 22, 1977, that provides for city fines and forfeitures to accrue to the county in exchange for sales tax receipts, base fines resulting from city arrests not included in paragraph (1) shall be deposited into the proper funds of the county.

(c) Each county shall keep a record of its deposits to its treasury and its transmittal to each city treasury pursuant to this section.

(d) The distribution specified in subdivision (b) applies to all funds subject thereto distributed on or after July 1, 1992, regardless of whether the court has elected to allocate and distribute funds pursuant to Section 1464.8.

(e) Any amounts remitted to the county from amounts collected by the Franchise Tax Board upon referral by a county pursuant to Article 6 (commencing with Section 19280) of Chapter 5 of Part 10.2

of Division 2 of the Revenue and Taxation Code shall be allocated pursuant to this section.

SEC. 15. Section 1463.007 is added to the Penal Code, to read:

1463.007. Notwithstanding any other provision of law, any county or court that implements or has implemented a comprehensive program to identify and collect delinquent fines and forfeitures, with or without warrant having been issued against the alleged violator, and for which the base fine excluding state and county penalties is at least one hundred dollars ($100), may deduct and deposit in the county treasury the cost of operating that program, excluding capital expenditures, from any revenues collected thereby prior to making any distribution of revenues to other governmental entities required by any other provision of law. This section shall apply to costs incurred by a court or a county on or after June 30, 1997, and prior to the implementation of a time payments agreement, and this section shall supercede any prior provision of law to the contrary. This section does not apply to a defendant who is paying a fine or forfeiture through time payments, unless he or she is delinquent in making payments according to the agreed-upon payment schedule. For purposes of this section, a comprehensive collection program is a separate and distinct revenue collection activity and shall include at least 10 of the following components:

(a) Monthly bill statements to all debtors.

(b) Telephone contact with delinquent debtors to apprise them of their failure to meet payment obligations.

(c) Issuance of warning letters to advise delinquent debtors of an outstanding obligation.

(d) Requests for credit reports to assist in locating delinquent debtors.

(e) Access to Employment Development Department employment and wage information.

(f) The generation of monthly delinquent reports.

(g) Participation in the Franchise Tax Board's tax intercept program.

(h) The use of Department of Motor Vehicle information to locate delinquent debtors.

(i) The use of wage and bank account garnishments.

(j) The imposition of liens on real property and proceeds from the sale of real property held by a title company.

(k) The filing of objections to the inclusion of outstanding fines and forfeitures in bankruptcy proceedings.

(*l*) Coordination with the probation department to locate debtors who may be on formal or informal probation.

(m) The initiation of drivers' license suspension actions where appropriate.

(n) The capability to accept credit card payments.

SEC. 15.5. The Legislature finds that, whereas the appropriation from the General Fund to the Trial Court Trust Fund provided for

in Chapter 859 of the Statutes of 1997 was necessary to transfer the estimated amount of trial court funding revenues remitted to the state by counties prior to the effective date of the Lockyer-Isenberg Trial Court Funding Act of 1997, as enacted by Chapter 850 of the Statutes of 1997, the actual amount of revenues remitted to the state exceeded the amount of the appropriation by twenty million five hundred thousand dollars ($20,500,000). Accordingly, immediately upon the enactment of this act, the Controller shall transfer from the General Fund to the Trial Court Trust Fund, a sum as necessary to provide a separate amount of twenty million five hundred thousand dollars ($20,500,000) for disbursement by the Controller to trial courts for uncompensated expenses of trial court operations incurred during fiscal year 1997–1998, plus the sum of ninety million dollars ($90,000,000). The ninety million dollars ($90,000,000) shall be in the form of a no interest loan to be repaid to the General Fund from the Trial Court Trust Fund by the Controller within 10 days of the enactment of the Budget Act of 1998.

All funds available in the Trial Court Trust Fund between July 1, 1998, and August 31, 1998, are hereby appropriated for apportionment by the Controller, according to allocation by the Judicial Council, to reimburse trial courts for uncompensated expenses of trial court operations incurred during fiscal year 1997–98 and to meet the payroll for trial court personnel, and the compensation needs of the trial courts with respect to contract personnel serving the trial courts where these services are required by the Constitution, for fiscal year 1998–99. In allocating these funds, the Judicial Council shall consider the actual amount of funding necessary to meet the payroll of trial court employees, subordinate judicial officers, and municipal court judges, and provide compensation for contract personnel serving the courts where those services are required by the Constitution. No moneys appropriated between July 1, 1998, and August 31, 1998, for the purpose of providing compensation for trial court personnel shall be used in a manner that would increase the moneys allocated from the Trial Court Trust Fund for trial court funding for the 1998–99 fiscal year beyond the amount appropriated in the Budget Act of 1998.

SEC. 16. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make necessary changes in the trial court funding mechanism, it is necessary that this act take effect immediately.

CHAPTER 147

An act to amend Sections 2151, 13203, 13206, 13300, 13301, and 13302 of the Elections Code, as amended by Proposition 198 of the March 26, 1996, primary election, relating to elections, and calling a special election to be consolidated with the general election of November 3, 1998, to take effect immediately, as an act calling an election.

[Approved by Governor July 13, 1998. Filed with Secretary of State July 13, 1998.]

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

SECTION 1. This act shall be known and may be cited as the Save the Presidential Primary Act of 1998.

SEC. 2. Section 2151 of the Elections Code is amended to read:

2151. At the time of registering and of transferring registration, each elector may declare the name of the political party with which he or she intends to affiliate at the ensuing primary election. The name of that political party shall be stated in the affidavit of registration and the index.

The voter registration card shall inform the affiant that any elector may decline to state a political affiliation, and that all properly registered voters may vote for their choice at any primary election for any candidate for each office regardless of political affiliation and without a declaration of political faith or allegiance, but no person shall be entitled to vote the ballot of any political party for delegates to a party's presidential nominating convention unless the person has stated the name of that party with which he or she intends to affiliate. The voter registration card shall include a listing of all qualified political parties.

Notwithstanding any provision to the contrary, no person shall be permitted to vote the ballot for any elective political party central or district committee member other than the party designated in his or her registration, except as provided by Section 2152.

SEC. 3. Section 13203 of the Elections Code is amended to read:

13203. (a) Across the top of the ballot shall be printed in heavy-faced gothic capital type not smaller than 30-point, the words "OFFICIAL BALLOT." However, if the ballot is no wider than a single column, the words "OFFICIAL BALLOT" may be as small as 24-point. Beneath this heading, in the case of an official primary election, shall be printed in 18-point boldfaced gothic capital type the words "OFFICIAL PRIMARY BALLOT." Beneath the heading line or lines, there shall be printed, in boldface type as large as the width of the ballot makes possible, the number of the congressional, Senate, and Assembly district, the name of the county in which the ballot is to be voted, and the date of the election.

(b) Partisan ballots used in a presidential primary election for selection of delegates for a party's presidential nominating convention shall prominently specify the name of the political party.

SEC. 4. Section 13206 of the Elections Code is amended to read:

13206. (a) On the official primary ballot used in a direct primary election, immediately below the instructions to voters, there shall be a box one-half inch high enclosed by a heavy-ruled line the same as the borderline. This box shall be as long as there are columns for the ballot and shall be set directly above these columns. Within the box shall be printed in 24-point boldfaced gothic capital type the words "Partisan Offices."

(b) The same style of box described in subdivision (a) shall also appear over the columns of the nonpartisan part of the official primary ballot and within the box in the same style and point size of type shall be printed "Nonpartisan Offices."

(c) This section shall not apply to partisan presidential primary ballots or ballots for elective political party central or district committee members prepared in accordance with Section 13300.

SEC. 5. Section 13300 of the Elections Code is amended to read:

13300. (a) By at least 29 days before the primary election, each county elections official shall prepare identical sample ballots for each voter; provided, however, that (1) in the case of ballots involving elective political party central or district committee members, each county elections official shall prepare separate ballots for the sole use of persons registered with that party, as provided for in Section 2151, and (2) in the case of partisan primary ballots involving the selection of delegates to the presidential nominating convention of a political party, each county elections official shall prepare separate ballots for the sole use of persons registered with that political party. On the official identical primary ballots, each county elections official shall place thereon in each case in the order provided in Chapter 2 (commencing with Section 13100), and under the appropriate title of each office, the names and party affiliations of all candidates organized randomly as provided in Section 13112 and not grouped by political party, for whom nomination papers have been duly filed with him or her or have been certified to him or her by the Secretary of State to be voted for in his or her county at the primary election.

(b) The sample ballots shall be identical to the official ballots and partisan presidential primary ballots, except as otherwise provided by law. The sample ballots shall be printed on paper of a different texture from the paper to be used for the official ballot.

(c) Except as provided in Section 13230, one sample official primary ballot shall be mailed to each voter entitled to vote at the primary not more than 40 nor less than 10 days before the election.

SEC. 6. Section 13301 of the Elections Code is amended to read:

13301. (a) At the time the county elections official prepares sample partisan ballots for the presidential primary, he or she shall

also prepare a list with the name of candidates for delegates for each political party. The names of the candidates for delegates of any political party shall be arranged upon the list of candidates for delegates of that party in parallel columns under their preference for President. The order of groups on the list shall be alphabetically according to the names of the persons they prefer appear upon the ballot. Each column shall be headed in boldface 10-point, gothic type as follows: "The following delegates are pledged to _____." (The blank being filled in with the name of that candidate for presidential nominee for whom the members of the group have expressed a preference.) The names of the candidates for delegates shall be printed in eight-point, roman capital type.

(b) Copies of the list of candidates for delegates of each party shall be submitted by the county elections official to the chairman of the county central committee of that party, and the county elections official shall post a copy of each list in a conspicuous place in his or her office.

SEC. 7. Section 13302 of the Elections Code is amended to read:

13302. The county elections official shall forthwith submit the sample official primary ballot and partisan primary ballot, if any, to the chairperson of the county central committee of each political party, and shall mail a copy to each candidate for whom nomination papers have been filed in his or her office or whose name has been certified to him or her by the Secretary of State, to the post office address as given in the nomination paper or certification. The county elections official shall post a copy of the sample ballot or ballots in a conspicuous place in his or her office.

SEC. 8. A special election is hereby called to be held throughout the state on November 3, 1998. The election shall be consolidated with the general election to be held on that date. The consolidated election shall be held and conducted in all respects as if there were only one election and only one form of ballot shall be used.

SEC. 9. Notwithstanding the requirements of Sections 9040, 9043, 9044, 9061, and 9082 of the Elections Code, or any other provision of law, Sections 1 to 7, inclusive, of this act, if enacted during the 1998 portion of the 1997–98 Regular Session of the Legislature, shall be submitted to the voters at the election called by Section 8 of this act.

SEC. 10. This is an act calling an election pursuant to paragraph (3) of subdivision (c) of Section 8 of Article IV of the California Constitution, and shall take effect immediately.

CHAPTER 148

An act to amend Section 5328 of the Welfare and Institutions Code, relating to human services.

[Approved by Governor July 13, 1998. Filed with
Secretary of State July 13, 1998.]

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

SECTION 1. Section 5328 of the Welfare and Institutions Code is amended to read:

5328. All information and records obtained in the course of providing services under Division 4 (commencing with Section 4000), Division 4.1 (commencing with Section 4400), Division 4.5 (commencing with Section 4500), Division 5 (commencing with Section 5000), Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7100), to either voluntary or involuntary recipients of services shall be confidential. Information and records obtained in the course of providing similar services to either voluntary or involuntary recipients prior to 1969 shall also be confidential. Information and records shall be disclosed only in any of the following cases:

(a) In communications between qualified professional persons in the provision of services or appropriate referrals, or in the course of conservatorship proceedings. The consent of the patient, or his or her guardian or conservator shall be obtained before information or records may be disclosed by a professional person employed by a facility to a professional person not employed by the facility who does not have the medical or psychological responsibility for the patient's care.

(b) When the patient, with the approval of the physician, licensed psychologist, or social worker with a master's degree in social work, who is in charge of the patient, designates persons to whom information or records may be released, except that nothing in this article shall be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information which has been given to him or her in confidence by members of a patient's family.

(c) To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he or she may be entitled.

(d) If the recipient of services is a minor, ward, or conservatee, and his or her parent, guardian, guardian ad litem, or conservator designates, in writing, persons to whom records or information may be disclosed, except that nothing in this article shall be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information which has been given to him or her in confidence by members of a patient's family.

(e) For research, provided that the Director of Mental Health or the Director of Developmental Services designates by regulation, rules for the conduct of research and requires the research to be first reviewed by the appropriate institutional review board or boards.

The rules shall include, but need not be limited to, the requirement that all researchers shall sign an oath of confidentiality as follows:

_____
Date

As a condition of doing research concerning persons who have received services from _____ (fill in the facility, agency or person), I, _____, agree to obtain the prior informed consent of such persons who have received services to the maximum degree possible as determined by the appropriate institutional review board or boards for protection of human subjects reviewing my research, and I further agree not to divulge any information obtained in the course of such research to unauthorized persons, and not to publish or otherwise make public any information regarding persons who have received services such that the person who received services is identifiable.

I recognize that the unauthorized release of confidential information may make me subject to a civil action under provisions of the Welfare and Institutions Code.

(f) To the courts, as necessary to the administration of justice.

(g) To governmental law enforcement agencies as needed for the protection of federal and state elective constitutional officers and their families.

(h) To the Committee on Senate Rules or the Committee on Assembly Rules for the purposes of legislative investigation authorized by the committee.

(i) If the recipient of services who applies for life or disability insurance designates in writing the insurer to which records or information may be disclosed.

(j) To the attorney for the patient in any and all proceedings upon presentation of a release of information signed by the patient, except that when the patient is unable to sign the release, the staff of the facility, upon satisfying itself of the identity of the attorney, and of the fact that the attorney does represent the interests of the patient, may release all information and records relating to the patient except that nothing in this article shall be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information that has been given to him or her in confidence by members of a patient's family.

(k) Upon written agreement by a person previously confined in or otherwise treated by a facility, the professional person in charge of the facility or his or her designee may release any information, except information that has been given in confidence by members of the person's family, requested by a probation officer charged with the evaluation of the person after his or her conviction of a crime if the professional person in charge of the facility determines that the

information is relevant to the evaluation. The agreement shall only be operative until sentence is passed on the crime of which the person was convicted. The confidential information released pursuant to this subdivision shall be transmitted to the court separately from the probation report and shall not be placed in the probation report. The confidential information shall remain confidential except for purposes of sentencing. After sentencing, the confidential information shall be sealed.

(*l*) Between persons who are trained and qualified to serve on "multidisciplinary personnel" teams pursuant to subdivision (d) of Section 18951. The information and records sought to be disclosed shall be relevant to the prevention, identification, management, or treatment of an abused child and his or her parents pursuant to Chapter 11 (commencing with Section 18950) of Part 6 of Division 9.

(m) To county patients' rights advocates who have been given knowing voluntary authorization by a client or a guardian ad litem. The client or guardian ad litem, whoever entered into the agreement, may revoke the authorization at any time, either in writing or by oral declaration to an approved advocate.

(n) To a committee established in compliance with Sections 4070 and 5624.

(o) In providing information as described in Section 7325.5. Nothing in this subdivision shall permit the release of any information other than that described in Section 7325.5.

(p) To the county mental health director or the director's designee, or to a law enforcement officer, or to the person designated by a law enforcement agency, pursuant to Sections 5152.1 and 5250.1.

(q) If the patient gives his or her consent, information specifically pertaining to the existence of genetically handicapping conditions, as defined in Section 341.5 of the Health and Safety Code, may be released to qualified professional persons for purposes of genetic counseling for blood relatives upon request of the blood relative. For purposes of this subdivision, "qualified professional persons" means those persons with the qualifications necessary to carry out the genetic counseling duties under this subdivision as determined by the genetic disease unit established in the State Department of Health Services under Section 309 of the Health and Safety Code. If the patient does not respond or cannot respond to a request for permission to release information pursuant to this subdivision after reasonable attempts have been made over a two-week period to get a response, the information may be released upon request of the blood relative.

(r) When the patient, in the opinion of his or her psychotherapist, presents a serious danger of violence to a reasonably foreseeable victim or victims, then any of the information or records specified in this section may be released to that person or persons and to law enforcement agencies as the psychotherapist determines is needed

for the protection of that person or persons. For purposes of this subdivision, "psychotherapist" means anyone so defined within Section 1010 of the Evidence Code.

(s) To persons serving on an interagency case management council established in compliance with Section 5606.6 to the extent necessary to perform its duties. This council shall attempt to obtain the consent of the client. If this consent is not given by the client, the council shall justify in the client's chart why these records are necessary for the work of the council.

(t) (1) To the designated officer of an emergency response employee, and from that designated officer to an emergency response employee regarding possible exposure to HIV or AIDS, but only to the extent necessary to comply with provisions of the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (P.L. 101-381; 42 U.S.C. Sec. 201).

(2) For purposes of this subdivision, "designated officer" and "emergency response employee" have the same meaning as these terms are used in the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (P.L. 101-381; 42 U.S.C. Sec. 201).

(3) The designated officer shall be subject to the confidentiality requirements specified in Section 120980, and may be personally liable for unauthorized release of any identifying information about the HIV results. Further, the designated officer shall inform the exposed emergency response employee that the employee is also subject to the confidentiality requirements specified in Section 120980, and may be personally liable for unauthorized release of any identifying information about the HIV test results.

(u) (1) To a law enforcement officer who personally lodges with a facility, as defined in paragraph (2), a warrant of arrest or an abstract of such a warrant showing that the person sought is wanted for a serious felony, as defined in Section 1192.7 of the Penal Code, or a violent felony, as defined in Section 667.5 of the Penal Code. The information sought and released shall be limited to whether or not the person named in the arrest warrant is presently confined in the facility. This paragraph shall be implemented with minimum disruption to health facility operations and patients, in accordance with Section 5212. If the law enforcement officer is informed that the person named in the warrant is confined in the facility, the officer may not enter the facility to arrest the person without obtaining a valid search warrant or the permission of staff of the facility.

(2) For purposes of paragraph (1), a facility means all of the following:

(A) A state hospital, as defined in Section 4001.

(B) A general acute care hospital, as defined in subdivision (a) of Section 1250 of the Health and Safety Code, solely with regard to information pertaining to a mentally disordered person subject to this section.

(C) An acute psychiatric hospital, as defined in subdivision (b) of Section 1250 of the Health and Safety Code.

(D) A psychiatric health facility, as described in Section 1250.2 of the Health and Safety Code.

(E) A mental health rehabilitation center, as described in Section 5675.

(F) A skilled nursing facility with a special treatment program for chronically mentally disordered patients, as described in Sections 51335 and 72445 to 72475, inclusive, of Title 22 of the California Code of Regulations.

The amendment of subdivision (d) enacted at the 1970 Regular Session of the Legislature does not constitute a change in, but is declaratory of, the preexisting law.

CHAPTER 149

An act to amend Section 52335.4 of, and to repeal Section 52318 of, the Education Code, relating to vocational education.

[Approved by Governor July 17, 1998. Filed with Secretary of State July 17, 1998.]

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

SECTION 1. Section 52318 of the Education Code is repealed.

SEC. 2. Section 52335.4 of the Education Code is amended to read:

52335.4. The Superintendent of Public Instruction shall determine each ROC/P's share of funded growth average daily attendance by computing the sum of subdivisions (a), (b), and (c):

(a) Subtract the ROC/P's annual units of funded average daily attendance for the prior year from the ROC/P's annual units of funded average daily attendance for the second prior year. If the amount computed pursuant to this subdivision is negative, it shall be deemed to be zero.

(b) Allocate 25 percent of the allowable growth average daily attendance funded in the Budget Act to low participation ROC/P's, pursuant to criteria established by the Superintendent of Public Instruction.

(c) (1) Subtract the statewide sum of the growth average daily attendance computed pursuant to subdivisions (a) and (b) from the allowable growth in average daily attendance funded in the Budget Act. If the amount computed is negative, it shall be deemed to be zero.

(2) (A) Calculate the ROC/P's pro rata share of the funded growth average daily attendance calculated pursuant to paragraph (1), based on the prior year average daily attendance in grades 9 to

12, inclusive, for the school districts served by the ROC/P in relation to the total statewide prior year average daily attendance in grades 9 to 12, inclusive. For purposes of the calculation required by this paragraph, the Superintendent of Public Instruction shall use the average daily attendance reported for the second principal apportionment of the prior year.

(B) In calculating the pro rata share of funded growth average daily attendance, the Superintendent of Public Instruction shall ensure that each ROC/P is provided at least 10 units of allowed growth average daily attendance pursuant to subdivisions (b) and (c).

(d) (1) It is the intent of the Legislature that each ROC/P use its share of funded growth average daily attendance provided pursuant to this section to serve pupils in grades 9 to 12, inclusive, unless the governing board or governing boards of the school district or districts overseeing the ROC/P determine that the needs of pupils in grades 9 to 12, inclusive, have been met.

(2) It is the intent of the Legislature that, if a determination is made pursuant to paragraph (1) that the needs of pupils in grades 9 to 12, inclusive, have been met, then the governing board or governing boards of the school district or districts overseeing the ROC/P may authorize the ROC/P to use its share of funded growth average daily attendance provided pursuant to this section to serve adults.

SEC. 3. Regardless of the effective date of this act, it is the intent of the Legislature that Section 52335.4 of the Education Code, as amended by this act, be used for growth calculations for regional occupational centers and programs for the 1998–99 fiscal year and subsequent fiscal years.

CHAPTER 150

An act to amend Sections 1173, 1177, and 1184 of, and to repeal and add Section 1183 of, the Labor Code, relating to employment.

[Approved by Governor July 17, 1998. Filed with Secretary of State July 17, 1998.]

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

SECTION 1. Section 1173 of the Labor Code is amended to read:

1173. It is the continuing duty of the Industrial Welfare Commission, hereinafter referred to in this chapter as the commission, to ascertain the wages paid to all employees in this state, to ascertain the hours and conditions of labor and employment in the various occupations, trades, and industries in which employees are

employed in this state, and to investigate the health, safety, and welfare of those employees.

The commission shall conduct a full review of the adequacy of the minimum wage at least once every two years. The commission may, upon its own motion or upon petition, amend or rescind any order or portion of any order or adopt an order covering any occupation, trade, or industry not covered by an existing order pursuant to this chapter.

Before adopting any new rules, regulations, or policies, the commission shall consult with the Occupational Safety and Health Standards Board to determine those areas and subject matters where the respective jurisdictions of the commission and the Occupational Safety and Health Standards Board overlap. This consultation need not take the form of a joint meeting. In the case of such overlapping jurisdiction, the Occupational Safety and Health Standards Board shall have exclusive jurisdiction, and rules, regulations, or policies of the commission on the same subject have no force or effect.

SEC. 2. Section 1177 of the Labor Code is amended to read:

1177. (a) The commission may make and enforce rules of practice and procedure and shall not be bound by the rules of evidence. Each order of the commission shall be concurred in by a majority of the commissioners.

(b) The commission shall prepare a statement as to the basis upon which an adopted or amended order is predicated. The statement shall be concurred in by a majority of the commissioners. The commission shall publish a copy of the statement with the order in the California Regulatory Notice Register. The commission also shall provide a copy of the statement to any interested party upon request.

SEC. 3. Section 1183 of the Labor Code is repealed.

SEC. 4. Section 1183 is added to the Labor Code, to read:

1183. (a) So far as practicable, the commission, by mail, shall send a copy of the order authorized by Section 1182 to each employer in the occupation or industry in question, and each employer shall post a copy of the order in the building in which employees affected by the order are employed. The commission shall also send a copy of the order to each employer registering his or her name with the commission for that purpose, but failure to mail the order or notice of the order to any employer affected by the order shall not relieve the employer from the duty of complying with the order.

(b) The commission shall prepare a summary of the regulations contained in its orders. The summary shall be printed on the first page of the document containing the full text of the order. The summary shall include a brief description of the following subjects of the orders: minimum wage, hours and days of work, reporting time, pay records, cash shortages and breakage, uniforms and equipment, meals and lodging, meal and rest periods, and seats. The summary shall also include information as to how to contact the field office of the Division of Labor Standards Enforcement, how to obtain a copy

of the full text of the order and the statement as to the basis for the order, and any other information the commission deems necessary. The commission, at its discretion, may prepare a separate summary for each order or any combination of orders, or it may incorporate the regulations of all its orders into a single summary.

(c) A finding by the commission that there has been publication of any action taken by the commission as required by Section 1182.1 is conclusive as to the obligation of an employer to comply with the order.

(d) Every employer who is subject to an order of the commission shall post a copy of the order and keep it posted in a conspicuous location frequented by employees during the hours of the workday.

SEC. 5. Section 1184 of the Labor Code is amended to read:

1184. Any action taken by the commission pursuant to Section 1182 shall be effective on the first day of the succeeding January or July and not less than 60 days from the date of publication pursuant to Section 1182.1.

CHAPTER 151

An act to amend Sections 1570.7, 1572, 1572.9, 1576, 1585.2, 1585.5, 1588.2, and 1588.7 of, to amend and renumber Section 1589.5 of, and to repeal Section 1589 of, the Health and Safety Code, and to amend Sections 14525, 14526, 14530, 14550, 14552.2, 14555, 14571, 14575, 14577, and 14585 of the Welfare and Institutions Code, relating to adult care services.

[Approved by Governor July 17, 1998. Filed with Secretary of State July 17, 1998.]

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

SECTION 1. Section 1570.7 of the Health and Safety Code is amended to read:

1570.7. As used in this chapter:

(a) "Adult day health care" means an organized day program of therapeutic, social, and health activities and services provided pursuant to this chapter to elderly persons with functional impairments, either physical or mental, for the purpose of restoring or maintaining optimal capacity for self-care. Provided on a short-term basis, adult day health care serves as a transition from a health facility or home health program to personal independence. Provided on a long-term basis, it serves as an option to institutionalization in long-term health care facilities, when 24-hour skilled nursing care is not medically necessary or viewed as desirable by the recipient or his or her family.

(b) "Adult day health center" or "adult day health care center" means a licensed and certified facility which provides adult day health care.

(c) "Elderly" or "older person" means a person 55 years of age or older, but also includes other adults who are chronically ill or impaired and who would benefit from adult day health care.

(d) "Individual plan of care" means a plan designed to provide recipients of adult health care with appropriate treatment in accordance with the assessed needs of each individual.

(e) "License" means a basic permit to operate an adult day health care center. With respect to a health facility licensed pursuant to Chapter 2 (commencing with Section 1250), "license" means a special permit, as defined by Section 1251.5, empowering the health facility to provide adult day health care services.

(f) "Maintenance program" means procedures and exercises that are provided to a participant, pursuant to Section 1580, in order to generally maintain existing function. These procedures and exercises are planned by a licensed or certified therapist and are provided by a person who has been trained by a licensed or certified therapist and who is directly supervised by a nurse or by a licensed or certified therapist.

(g) "Planning council" or "council" means an adult day health care planning council established pursuant to Section 1572.5.

(h) "Restorative therapy" means physical, occupational, and speech therapy, and psychiatric and psychological services, that are planned and provided by a licensed or certified therapist. The therapy and services may also be provided by an assistant or aide under the appropriate supervision of a licensed therapist, as determined by the licensed therapist. The therapy and services are provided to restore function, when there is an expectation that the condition will improve significantly in a reasonable period of time, as determined by the multidisciplinary assessment team.

(i) "Committee" means the Long-Term Care Committee established pursuant to Section 1572.

(j) "Department" or "state department" means the California Department of Aging or the State Department of Health Services as specified in the interagency agreement between the two departments.

SEC. 2. Section 1572 of the Health and Safety Code is amended to read:

1572. The functions and duties of the State Department of Health Services provided for under this chapter shall be performed by the California Department of Aging commencing on the date those functions are transferred from the State Department of Health Services to the California Department of Aging. The authority, functions, and responsibility for the administration of the adult day health care program by the California Department of Aging and the State Department of Health Services shall be defined in an

interagency agreement between the two departments that specifies how the departments will work together.

The Health and Welfare Agency shall develop a plan by July 1, 1988, for streamlining the certification and licensing process for adult day health care.

The interagency agreement shall specify that the California Department of Aging is designated by the state department as the agency responsible for community long-term care programs. At a minimum, the interagency agreement shall clarify each department's responsibilities on issues involving licensure and certification of adult day health care providers, payment of adult day health care claims, prior authorization of services, promulgation of regulations, and development of adult day health care Medi-Cal rates. The interagency agreement shall also specify that as of January 1, 1988, the State Department of Health Services shall delegate to the California Department of Aging the responsibility of performing the financial and cost report audits and the resolution of audit appeals which are necessary to ensure program integrity. As provided for in Section 19994.10 of the Government Code, the personnel resources and funding, equivalent to one personnel year used to perform the audit responsibilities shall be transferred to the California Department of Aging. This agreement shall also include provisions whereby the state department and the California Department of Aging shall collaborate in the development and implementation of health programs and services for older persons and functionally impaired adults.

As used in this chapter, "director" shall refer to the Director of the California Department of Aging or the Director of the State Department of Health Services as specified in the interagency agreement and "state department" shall refer to the California Department of Aging. A Long-Term Care Committee is hereby established in the California Department of Aging. The committee shall include, but not be limited to, a member of the California Commission on Aging, who shall be a member of the Long-Term Care Committee of the commission, a representative of the California Association for Adult Day Services, a representative of the California Association of Area Agencies on Aging, a representative of the California Conference of Local Health Officers, a member of a local adult day health care planning council, nonprofit representatives and professionals with expertise in Alzheimer's disease or a disease of a related disorder, a member of the California Coalition of Independent Living Centers, and representatives from other appropriate state departments, including the State Department of Health Services, the State Department of Social Services, the State Department of Mental Health, the State Department of Developmental Services and the State Department of Rehabilitation, as deemed appropriate by the Director of the California Department of Aging. At least one member shall be a

person over 60 years of age. The committee shall function as an advisory body to the California Department of Aging and advise the Director of the California Department of Aging regarding development of community-based long-term care programs.

This function shall also include advice to the Director of the California Department of Aging for recommendations to the State Department of Health Services on licensure, Medi-Cal reimbursement, and utilization control issues.

The committee shall be responsible for the reviewing of new programs under the jurisdiction of the department.

The committee shall assist the Director of the California Department of Aging in the development of procedures and guidelines for new contracts or grants, as well as review and make recommendations on applicants. The committee shall take into consideration the desirability of coordinating and utilizing existing resources, avoidance of duplication of services and inefficient operations, and locational preferences with respect to accessibility and availability to the economically disadvantaged older person.

Additionally, the functions of the committee shall include all of the following:

(a) The committee shall review and make recommendations on guidelines for adoption by the Director of the California Department of Aging setting forth principles for evaluation of community need for adult day health care, which shall take into consideration the desirability of coordinating and utilizing existing resources, avoidance of duplication of services and inefficient operations, and locational preferences with respect to accessibility and availability to the economically disadvantaged older person.

(b) The committee shall review county plans submitted pursuant to Section 1572.9. Such county plans shall be approved if consistent with the guidelines adopted by the director pursuant to subdivision (a).

(c) The committee shall review and make recommendations to the Director of the California Department of Aging concerning individual proposals for startup funds and for original licensure of proposed adult day health care centers. The Director of the California Department of Aging shall make recommendations regarding licensure to the Licensing and Certification Division in the State Department of Health Services. This review may include onsite inspections by the committee, or a special subcommittee thereof, for the purpose of evaluating a proposed provider or its facility. The basis of this review shall be the approved county plan and an evaluation of the ability of the applicant to provide adult day health care in accordance with the requirements of this chapter and regulations adopted hereunder. A public hearing on each individual proposal for an adult day health care center may be held by the department in conjunction with the local adult day health care council in the county to be served. A hearing shall be held if requested by a local adult day

health care council. In order to provide the greatest public input, the hearing should preferably be held in the service area to be served.

SEC. 3. Section 1572.9 of the Health and Safety Code is amended to read:

1572.9. Each planning council approved by the director as meeting the compositional requirements of Section 1572.5 shall adopt an adult day health care plan for the county or counties represented by the council. The plan shall be consistent with the state guidelines adopted pursuant to subdivision (a) of Section 1572 and may include the council's recommendations respecting providers initially determined to be suitable for approval as adult day health care centers. Such initial recommendations shall not bind the council with respect to future consideration of individual applications for licensure.

Prior to adopting the plan, the council shall hold a hearing or hearings thereon at which public comment shall be received and considered. The hearing or hearings shall be noticed in advance in the manner prescribed by the state department. The number of hearings shall be determined by the state department in consultation with the local planning council. The plan shall become effective when approved by the state review committee.

SEC. 4. Section 1576 of the Health and Safety Code is amended to read:

1576. All applications for a new license shall be submitted to the long-term care committee and, if applicable, to the planning council for the county in which the adult day health care center will be located, which shall review the application as provided in subdivision (c) of Section 1572 and in Section 1573. The director shall approve the application if it is determined to be consistent with the existing county plan, no substantial basis for denial of the license exists under Section 1575.7, and the applicant has met all the requirements for licensure set forth in this chapter and regulations adopted hereunder. Otherwise the director shall deny issuance of the license.

SEC. 5. Section 1585.2 of the Health and Safety Code is amended to read:

1585.2. Any operator of a health facility, clinic, or community care facility licensed to provide adult day health care under this chapter shall provide such adult day health care as an independent program which is located in a separate, freestanding facility or in a distinct portion of the health facility, clinic, or community care facility.

SEC. 6. Section 1585.5 of the Health and Safety Code is amended to read:

1585.5. Adult day health care centers shall provide services to each participant pursuant to an individual plan of care designed to maintain or restore each participant's optimal capacity for self-care.

SEC. 7. Section 1588.2 of the Health and Safety Code is amended to read:

1588.2. Eligibility for grants pursuant to this article shall be limited to any public or private nonprofit agency. As a condition of making a grant, the director shall require the applicant to match not less than 20 percent of the amount granted. The required match may be cash or in-kind contributions, or a combination of both. In-kind contributions may include, but shall not be limited to, staff and volunteer services.

SEC. 8. Section 1588.7 of the Health and Safety Code is amended to read:

1588.7. (a) The state department shall adopt specific guidelines for the establishment of grant-supported activities, including criteria for evaluation of each activity and monitoring to assure compliance with grant conditions and applicable regulations of the state department. The guidelines shall be developed in consultation with the Long-Term Care Committee. Funds shall not be awarded until the proposal receives favorable recommendation from the local adult day health care planning council, if established pursuant to Section 1572.5, and is approved by the state department.

(b) The state department shall develop a contract with each selected project.

SEC. 9. Section 1589 of the Health and Safety Code is repealed.

SEC. 10. Section 1589.5 of the Health and Safety Code is amended and renumbered to read:

1589. State administrative costs on grants issued pursuant to this article shall not exceed 10 percent of the amount of the grants.

SEC. 11. Section 14525 of the Welfare and Institutions Code is amended to read:

14525. Any adult eligible for benefits under Chapter 7 (commencing with Section 14000) shall be eligible for adult day health care services if that person meets any one of the following criteria:

(a) The person is at the point of discharge from a general acute care hospital or other acute care facility and, except for the availability of an adult day health care program, would be placed in a long-term care institution.

(b) The person is residing in the community, but is in danger of institutionalization, and his or her disabilities and level of functioning are such that without intervention that placement would likely occur.

(c) The person is a resident of a nursing facility or other long-term care facility, but the department determines that institutional placement is unnecessary and the person is an appropriate candidate for adult day health care.

(d) The person is a resident of an intermediate care facility for the developmentally disabled-habilitative, and his or her disabilities and level of functioning are such that without supplemental intervention through adult day health care, placement to a more costly level of care would be likely to occur. The department shall establish an

appropriate reimbursement rate for intermediate care facility for the developmentally disabled-habilitative clients to ensure that there is no duplicate payment for services.

SEC. 12. Section 14526 of the Welfare and Institutions Code is amended to read:

14526. Participation in an adult day health care program shall require prior authorization by the department. The authorization request shall be initiated by the provider and shall include the results of the assessment screening conducted by the provider's multidisciplinary team and the resulting individualized plan of care. Participation shall begin upon application by the prospective participant or upon referral from community or health agencies, physician, hospital, family, or friends of a potential participant.

The adult day health care provider shall provide services only to those participants living within its service area, as determined by the department consistent with the county plan adopted pursuant to Section 1572.9 of the Health and Safety Code; provided, that, under special circumstances in which an adult day health care provider meets a special need or affinity of a particular individual residing outside the provider's service area, the provider may accept such individual as a participant, conditioned upon limiting reimbursable transportation costs to such costs which are incurred solely within the provider's service area.

SEC. 13. Section 14530 of the Welfare and Institutions Code is amended to read:

14530. Individual plans of care and individual monthly service reports shall be submitted to the department. Each provider shall supply a written statement to the participant explaining what services will be provided and specifying the scheduled days of attendance. Such statement, which shall be known as the participation agreement, shall be signed by the participant and retained in the participant's file.

SEC. 14. Section 14550 of the Welfare and Institutions Code is amended to read:

14550. Adult day health care centers shall offer, and shall provide directly on the premises, at least the following services:

(a) Rehabilitation services, including the following:

(1) Occupational therapy as an adjunct to treatment designed to restore impaired function of patients with physical or mental limitations.

(2) Physical therapy appropriate to meet the needs of the patient.

(3) Speech therapy for participants with speech or language disorders.

(b) Medical services supervised by either the participant's personal physician or a staff physician, or both, which emphasize prevention treatment, rehabilitation, and continuity of care and also provide for maintenance of adequate medical records. To the extent otherwise permitted by law, medical services may be provided by

nurse practitioners, as defined in Section 2835 of the Business and Professions Code, operating within the existing scope of practice, or under standardized procedures pursuant to Section 2725 of the Business and Professions Code, or by registered nurses practicing under standardized procedures pursuant to Section 2725 of the Business and Professions Code.

(c) Nursing services, including the following:

(1) Nursing services rendered by a professional nursing staff, who periodically evaluate the particular nursing needs of each participant and provide the care and treatment that is indicated.

(2) Self-care services oriented toward activities of daily living and personal hygiene, such as toileting, bathing, and grooming.

(d) Nutrition services, including the following:

(1) The program shall provide a minimum of one meal per day which is of suitable quality and quantity as to supply at least one-third of the daily nutritional requirement. Additionally, special diets and supplemental feedings shall be available if indicated.

(2) Dietary counseling and nutrition education for the participant and his or her family shall be a required adjunct of such service. Dietary counseling and nutrition education may be provided by a professional registered nurse, unless the participant is receiving a special diet prescribed by a physician, or a nurse determines that the services of a registered dietician are necessary.

(e) Psychiatric or psychological services which include consultation and individual assessment by a psychiatrist, clinical psychologist, or a psychiatric social worker, when indicated, and group or individual treatment for persons with diagnosed mental, emotional, or behavioral problems.

(f) Social work services to participants and their families to help with personal, family, and adjustment problems that interfere with the effectiveness of treatment.

(g) Planned recreational and social activities suited to the needs of the participants and designed to encourage physical exercise, to prevent deterioration, and to stimulate social interaction.

(h) Transportation service for participants, when needed, to and from their homes utilizing specially equipped vehicles to accommodate participants with severe physical disabilities that limit their mobility.

(i) Written procedures for dealing with emergency situations. These written procedures shall include either of the following:

(1) The use of a local 911 emergency response system.

(2) All of the following elements:

(A) The name and telephone number of a physician on call.

(B) Written arrangements with a nearby hospital for inpatient and emergency room service.

(C) Provision for ambulance transportation.

SEC. 15. Section 14552.2 of the Welfare and Institutions Code is amended to read:

14552.2. (a) Notwithstanding subdivisions (b) and (c) of Section 1570.7 of the Health and Safety Code or any other provision of law, if an adult day health care center licensee also provides adult day care or adult day support center services, the adult day health care license shall be the only license required to provide these additional services. Costs shall be allocated among the programs in accordance with generally accepted accounting practices.

(b) The department shall evaluate the adult day care or adult day support center services provided for in subdivision (a) for quality of care and compliance with program requirements, concurrent with inspections of the adult day health care facility, using a single survey process.

(c) The department and the California Department of Aging shall jointly develop and adopt regulations pursuant to Section 1580 of the Health and Safety Code for the provision of different levels of care under the single adult day health care license.

SEC. 16. Section 14555 of the Welfare and Institutions Code is amended to read:

14555. Each adult day health care provider shall establish a grievance procedure under which participants may submit their grievances. Such procedure shall be approved by the department prior to the approval of the certification. The department shall establish standards for such procedures to insure adequate consideration and rectification of participant grievances. A provider shall make written findings of fact in the case of each grievance processed, a copy of which shall be transmitted to the participant. If the Medi-Cal participant has an unresolved grievance, the fair hearing provided in Chapter 7 (commencing with Section 10950) of Part 2 of this division shall be available to resolve all grievances regarding care and administration by the adult day health care provider. The findings and recommendations of the department, based on the decision of the hearing officer, shall be binding upon the adult day health care provider.

SEC. 17. Section 14571 of the Welfare and Institutions Code is amended to read:

14571. The State Department of Health Services, in consultation with the California Association of Adult Day Services, shall develop a rate methodology. The methodology shall take into consideration all allowable costs associated with providing adult day health care services. Once a methodology has been approved by the department, it shall be the basis of future annual rate reviews.

Payment shall be for services provided in accordance with an approved individual plan of care. Billing shall be submitted directly to the department. Additionally, the department shall establish a reasonable rate of reimbursement for the initial assessment.

Nothing in this section shall preclude the department from entering into specific prospective budgeting and reimbursement agreements with providers.

SEC. 18. Section 14575 of the Welfare and Institutions Code is amended to read:

14575. Each adult day health care provider shall maintain a uniform accounting and reporting system as developed by the department, in consultation with the provider. The department shall implement a uniform cost accounting system and train providers in this system by July 1, 1987. The Department of Aging, in coordination with the department may approve an alternative cost accounting system where the provider demonstrates the ability to report comparable and reliable data. The provider shall submit annual cost reports to the department no later than five months after the close of the licensee's fiscal year. The report shall be submitted in the format prescribed by the state. Each facility shall maintain, for a period of three years following the submission of annual cost reports, financial and statistical records of the period covered by the cost reports which are accurate and in sufficient detail to substantiate the cost data reported. These records shall be made available to state or federal representatives upon request. The department may request a financial review performed by an independent certified public accountant as part of the provider's annual cost report. All certified financial statements shall be filed with the department within a period no later than three months after the department's request. The department may require a limited or complete certified public accountant audit when the monitoring activities carried out pursuant to Section 14573 reveal significant financial management deficiencies.

SEC. 19. Section 14577 of the Welfare and Institutions Code is amended to read:

14577. All subcontracts for services reimbursable under this chapter shall be entered into pursuant to regulations of the department. All subcontracts shall be in writing, and a copy shall be transmitted to the department for approval prior to taking effect. Each subcontract submitted to the department for approval shall contain the amount of compensation or other consideration which the subcontractor will receive under the terms of the subcontract with the adult day health care provider. However, this section shall not apply to employment contracts of salaried employees of an adult day health care licensee.

All subcontracts to provide health care benefits, including emergency services, shall include a specification that services will be provided to participants to meet the needs of the participants based upon the plans of care. All subcontracts to provide any of the basic services specified in Section 14550 through subcontractors, shall meet all of the qualifications required by, or pursuant to, this chapter as appropriate for the services which the subcontractors are required to perform.

Each subcontract shall require that the subcontractor make all of its books and records pertaining to the goods or services furnished

under the terms of the subcontract available for inspection, examination, or copying by the department during normal working hours at the subcontractor's principal place of business, or at such other place in the state as the department shall designate. Subcontracts between an adult day health care provider and a subcontractor shall be public records and shall be kept on file and be available at the center. The names of the officers and stockholders of the subcontractor shall also be kept on file and be available as public records at the center.

SEC. 20. Section 14585 of the Welfare and Institutions Code is amended to read:

14585. For purposes of this article, "state officer or employee" means a Member of Congress representing the State of California; a Member of the Legislature; a secretary of a state agency and those members of the secretary's staff who hold policymaking positions; those members of the Governor's staff who hold policymaking positions; an administrative aide or committee consultant of the Legislature; the appointive or civil service employee of the highest class or grade in each department, system, program, section, or other administrative subdivision of the department and the California Department of Aging, as defined in regulations adopted by those departments; any other employee in the department and the California Department of Aging who has any responsibility for the negotiation and development, or management of Medi-Cal contracts of an adult day health care center certified under the provisions of this chapter. The director shall adopt regulations further delineating the class of employees covered by this section.

SEC. 21. It is not the intent of the Legislature to create additional work for either the State Department of Health Services or the California Department of Aging, either in the surveying or development of regulations, that cannot be absorbed by existing resources in the California Department of Aging.

CHAPTER 152

An act to amend and renumber Sections 44205 and 44205.5 of the Education Code, relating to teacher credentialing.

[Approved by Governor July 17, 1998. Filed with Secretary of State July 17, 1998.]

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

SECTION 1. Section 44205 of the Education Code is amended and renumbered to read:

44275.3. Notwithstanding any other provision of law:

(a) (1) It is the intent of the Legislature that both of the following occur:

(A) That this section provide flexibility to enable school districts to recruit credentialed out-of-state elementary, secondary, and special education teachers to relocate to California.

(B) That any and all teachers hired in California pursuant to this section fully meet the requirements of the State of California.

(2) It is not the intent of the Legislature either to address the issue of interstate reciprocity of credentialing requirements or to dilute current California requirements for credentialed teachers.

(b) Any teacher from a state other than California may be employed by a school district pursuant to this section to provide instructional services if each of the following conditions are met:

(1) The teacher holds a valid credential that requires the teacher to meet requirements equivalent to the multiple or single subject teaching credential requirements in paragraphs (1) and (2) of subdivision (c) of Section 44227 or the special education credential requirements described in Section 44265.

(2) The credential from the state other than California is valid at the time the teacher commences to provide instructional services for the school district.

(3) The teacher is hired after the successful completion of a criminal background check conducted pursuant to Section 44332.6, by the governing board of the school district offering the teacher employment.

(c) The Commission on Teacher Credentialing shall grant a five-year preliminary multiple or single subject teaching credential or education specialist credential to a teacher meeting the requirements of subdivision (b) if the teacher has received an offer of employment from a California school district, county office of education, nonpublic, nonsectarian school or agency, or school operating under the direction of a California state agency.

(d) At or before the completion of one school year of teaching pursuant to this section, a teacher shall pass the state basic skills proficiency test, pursuant to Section 44252, administered by the Commission on Teacher Credentialing in order to be eligible to continue teaching pursuant to this section.

(e) At or before the completion of four school years of teaching pursuant to this section, a teacher shall, to the satisfaction of the Commission on Teacher Credentialing, meet the requirements for subject matter competence, for completion of a course or examination on the various methods of teaching reading, and for completion of a course or examination on the Constitution of the United States, within the meaning of paragraphs (3), (4), and (6), respectively, of subdivision (c) of Section 44227, in order to be eligible to continue teaching pursuant to this section. Additionally, to be eligible to continue teaching on an education specialist credential, the teacher shall also complete the requirements for nonspecial

education pedagogy and a supervised field experience program in general education.

(f) At or before the completion of five school years of teaching pursuant to this section, a teacher shall meet the requirements for completion of the study of health education, for completion of study and field experience in methods of delivering appropriate educational services to pupils with exceptional needs in regular education programs, and for completion of the study of computer-based technology, within the meaning of paragraphs (1), (2), (3), and (4), respectively, of subdivision (c) of Section 44259. A teacher holding a specialist credential pursuant to this section shall complete a program for the Professional Level II credential accredited by the Committee on Accreditation, established pursuant to Section 44373, including the requirements specified in this subdivision and subdivision (e).

(g) If a teacher fails to meet any of the requirements of subdivisions (b), (c), (d), (e), and (f), the Commission on Teacher Credentialing shall inactivate a preliminary credential granted pursuant to this section until the requirement is met. The time requirements contained in subdivisions (e) and (f) shall not be stayed by the inactivation of a preliminary credential under this subdivision.

(h) The Commission on Teacher Credentialing shall issue a professional clear credential to a teacher who meets the requirements of subdivisions (b), (c), (d), (e), and (f) and submits an application with appropriate fees and documentation of the completion of all requirements pursuant to this section.

SEC. 2. Section 44205.5 of the Education Code is amended and renumbered to read:

44275.5. (a) For purposes of Section 44275.3, a fee shall be levied and collected by the commission for the issuance of the five-year preliminary credential for out-of-state teachers. Commencing January 1, 1999, the fee for the issuance of the five-year preliminary credential for out-of-state teachers shall be up to two hundred dollars ($200), as determined by the commission within its discretion, in addition to any other fees required by statute, as appropriate.

(b) The proceeds of the fee levied and collected pursuant to subdivision (a) shall be used to offset the costs of the out-of-state teacher credential program established by, and to develop a tracking system to ensure compliance with, Section 44275.3.

(c) Annually, as part of the budget review process, the commission shall recommend to the Legislature a level for the fee to be levied and collected pursuant to subdivision (a) so that the fee may generate sufficient revenues to meet the goals set forth in subdivision (b). As part of the budget review process connected with the legislative deliberations on the Budget Act of 1999, the

commission shall report to the Legislature on the level of revenue that has been generated by the fee during the 1998–99 fiscal year.

CHAPTER 153

An act to amend Sections 14026 and 14037 of the Corporations Code, relating to small business financial development corporations.

[Approved by Governor July 17, 1998. Filed with Secretary of State July 17, 1998.]

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

SECTION 1. Section 14026 of the Corporations Code is amended to read:

14026. The director, following notification to the secretary, may do all of the following:

(a) 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 board meetings.

(f) Attend and participate at corporation meetings. The director, or his or her designee, shall be an ex officio, nonvoting representative on the board of directors and loan committees of each corporation. The director shall meet with the board of directors of each corporation at least once each fiscal year, commencing July 1, 1999.

(g) Assist corporations in applying for federal grant applications, and in obtaining program support from the business community.

SEC. 2. Section 14037 of the Corporations Code is amended to read:

14037. (a) All money deposited in the loan account is hereby continuously 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 and which is appropriated for these purposes.

(b) On and after January 1, 1997, accounts within the expansion fund for loan guarantees and surety bond guarantees, including loan loss reserves established for the purpose of paying loan defaults, shall be transferred to the small business development loan guarantee fund in the corporate fund of those corporations previously using those funds in the expansion fund to guarantee loans and surety bonds.

(c) The office may reallocate funds held within a corporation's small business development loan guarantee fund.

(1) The office shall reallocate funds based on which corporation is most effectively using its guarantee funds. If funds are withdrawn from a less effective corporation as part of a reallocation, the office shall make that withdrawal only after giving consideration to that corporation's fiscal solvency, its ability to honor loan guarantee defaults, and its ability to maintain a viable presence within the region it serves. Reallocation of funds shall occur no more frequently than once per fiscal year. Any decision made by the office pursuant to this subdivision may be appealed to the board. The board has authority to repeal or modify any decision to reallocate funds.

(2) The office may authorize a corporation to exceed the leverage ratio specified in Section 14030, subdivision (b) of Section 14070, and subdivision (a) of Section 14076 pending the annual reallocation of funds pursuant to this section. However, no corporation shall be permitted to exceed an outstanding guarantee liability of more than five times its portion of funds on deposit in the expansion fund.

CHAPTER 154

An act to amend Section 12652 of the Government Code, relating to state actions.

[Approved by Governor July 17, 1998. Filed with Secretary of State July 17, 1998.]

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

SECTION 1. Section 12652 of the Government Code is amended to read:

12652. (a) (1) The Attorney General shall diligently investigate violations under Section 12651 involving state funds. If the Attorney General finds that a person has violated or is violating Section 12651, the Attorney General may bring a civil action under this section against that person.

(2) If the Attorney General brings a civil action under this subdivision on a claim involving political subdivision funds as well as state funds, the Attorney General shall, on the same date that the complaint is filed in this action, serve by mail with "return receipt request" a copy of the complaint on the appropriate prosecuting authority.

(3) The prosecuting authority shall have the right to intervene in an action brought by the Attorney General under this subdivision within 60 days after receipt of the complaint pursuant to paragraph (2). The court may permit intervention thereafter upon a showing that all of the requirements of Section 387 of the Code of Civil Procedure have been met.

(b) (1) The prosecuting authority of a political subdivision shall diligently investigate violations under Section 12651 involving political subdivision funds. If the prosecuting authority finds that a person has violated or is violating Section 12651, the prosecuting authority may bring a civil action under this section against that person.

(2) If the prosecuting authority brings a civil action under this section on a claim involving state funds as well as political subdivision funds, the prosecuting authority shall, on the same date that the complaint is filed in this action, serve a copy of the complaint on the Attorney General.

(3) Within 60 days after receiving the complaint pursuant to paragraph (2), the Attorney General shall do either of the following:

(A) Notify the court that it intends to proceed with the action, in which case the Attorney General shall assume primary responsibility for conducting the action and the prosecuting authority shall have the right to continue as a party.

(B) Notify the court that it declines to proceed with the action, in which case the prosecuting authority shall have the right to conduct the action.

(c) (1) A person may bring a civil action for a violation of this article for the person and either for the State of California in the name of the state, if any state funds are involved, or for a political subdivision in the name of the political subdivision, if political subdivision funds are exclusively involved. The person bringing the action shall be referred to as the qui tam plaintiff. Once filed, the action may be dismissed only with the written consent of the court, taking into account the best interests of the parties involved and the public purposes behind this act.

(2) A complaint filed by a private person under this subdivision shall be filed in superior court in camera and may remain under seal for up to 60 days. No service shall be made on the defendant until after the complaint is unsealed.

(3) On the same day as the complaint is filed pursuant to paragraph (2), the qui tam plaintiff shall serve by mail with "return receipt requested" the Attorney General with a copy of the complaint and a written disclosure of substantially all material evidence and information the person possesses.

(4) Within 60 days after receiving a complaint and written disclosure of material evidence and information alleging violations that involve state funds but not political subdivision funds, the Attorney General may elect to intervene and proceed with the action.

(5) The Attorney General may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal pursuant to paragraph (2). The motion may be supported by affidavits or other submissions in camera.

(6) Before the expiration of the 60-day period or any extensions obtained under paragraph (5), the Attorney General shall do either of the following:

(A) Notify the court that it intends to proceed with the action, in which case the action shall be conducted by the Attorney General and the seal shall be lifted.

(B) Notify the court that it declines to proceed with the action, in which case the seal shall be lifted and the qui tam plaintiff shall have the right to conduct the action.

(7) (A) Within 15 days after receiving a complaint alleging violations that exclusively involve political subdivision funds, the Attorney General shall forward copies of the complaint and written disclosure of material evidence and information to the appropriate prosecuting authority for disposition, and shall notify the qui tam plaintiff of the transfer.

(B) Within 45 days after the Attorney General forwards the complaint and written disclosure pursuant to subparagraph (A), the prosecuting authority may elect to intervene and proceed with the action.

(C) The prosecuting authority may, for good cause shown, move for extensions of the time during which the complaint remains under seal. The motion may be supported by affidavits or other submissions in camera.

(D) Before the expiration of the 45-day period or any extensions obtained under subparagraph (C), the prosecuting authority shall do either of the following:

(i) Notify the court that it intends to proceed with the action, in which case the action shall be conducted by the prosecuting authority and the seal shall be lifted.

(ii) Notify the court that it declines to proceed with the action, in which case the seal shall be lifted and the qui tam plaintiff shall have the right to conduct the action.

(8) (A) Within 15 days after receiving a complaint alleging violations that involve both state and political subdivision funds, the Attorney General shall forward copies of the complaint and written disclosure to the appropriate prosecuting authority, and shall coordinate its review and investigation with those of the prosecuting authority.

(B) Within 60 days after receiving a complaint and written disclosure of material evidence and information alleging violations that involve both state and political subdivision funds, the Attorney General or the prosecuting authority, or both, may elect to intervene and proceed with the action.

(C) The Attorney General or the prosecuting authority, or both, may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). The motion may be supported by affidavits or other submissions in camera.

(D) Before the expiration of the 60-day period or any extensions obtained under subparagraph (C), the Attorney General shall do either of the following:

(i) Notify the court that it intends to proceed with the action, in which case the action shall be conducted by the Attorney General and the seal shall be lifted.

(ii) Notify the court that it declines to proceed with the action but that the prosecuting authority of the political subdivision involved intends to proceed with the action, in which case the seal shall be lifted and the action shall be conducted by the prosecuting authority.

(iii) Notify the court that both it and the prosecuting authority decline to proceed with the action, in which case the seal shall be lifted and the qui tam plaintiff shall have the right to conduct the action.

(E) If the Attorney General proceeds with the action pursuant to clause (i) of subparagraph (D), the prosecuting authority of the political subdivision shall be permitted to intervene in the action within 60 days after the Attorney General notifies the court of its intentions. The court may authorize intervention thereafter upon a showing that all the requirements of Section 387 of the Code of Civil Procedure have been met.

(9) The defendant shall not be required to respond to any complaint filed under this section until 30 days after the complaint is unsealed and served upon the defendant pursuant to Section 583.210 of the Code of Civil Procedure.

(10) When a person brings an action under this subdivision, no other person may bring a related action based on the facts underlying the pending action.

(d) (1) No court shall have jurisdiction over an action brought under subdivision (c) against a member of the State Senate or Assembly, a member of the state judiciary, an elected official in the executive branch of the state, or a member of the governing body of any political subdivision if the action is based on evidence or information known to the state or political subdivision when the action was brought.

(2) In no event may a person bring an action under subdivision (c) that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil money penalty proceeding in which the state or political subdivision is already a party.

(3) (A) No court shall have jurisdiction over an action under this article based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in an investigation, report, hearing, or audit conducted by or at the request of the Senate, Assembly, auditor, or governing body of a political subdivision, or from the news media, unless the action is brought by the Attorney General or the prosecuting authority of a political subdivision, or the person bringing the action is an original source of the information.

(B) For purposes of subparagraph (A), "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based, who voluntarily provided the information to the state or political subdivision before filing an action based on that information, and whose information provided the basis or catalyst for the investigation, hearing, audit, or report that led to the public disclosure as described in subparagraph (A).

(4) No court shall have jurisdiction over an action brought under subsection (c) based upon information discovered by a present or former employee of the state or a political subdivision during the course of his or her employment, unless that employee first in good faith exhausted existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels and unless the state or political subdivision failed to act on the information provided within a reasonable period of time.

(e) (1) If the state or political subdivision proceeds with the action, it shall have the primary responsibility for prosecuting the action. The qui tam plaintiff shall have the right to continue as a full party to the action.

(2) (A) The state or political subdivision may seek to dismiss the action for good cause notwithstanding the objections of the qui tam plaintiff if the qui tam plaintiff has been notified by the state or political subdivision of the filing of the motion and the court has provided the qui tam plaintiff with an opportunity to oppose the motion and present evidence at a hearing.

(B) The state or political subdivision may settle the action with the defendant notwithstanding the objections of the qui tam plaintiff if the court determines, after a hearing providing the qui tam plaintiff an opportunity to present evidence, that the proposed settlement is fair, adequate, and reasonable under all of the circumstances.

(f) (1) If the state or political subdivision elects not to proceed, the qui tam plaintiff shall have the same right to conduct the action as the Attorney General or prosecuting authority would have had if it had chosen to proceed under subdivision (c). If the state or political subdivision so requests, and at its expense, the state or political subdivision shall be served with copies of all pleadings filed in the action and supplied with copies of all deposition transcripts.

(2) (A) Upon timely application, the court shall permit the state or political subdivision to intervene in an action with which it had initially declined to proceed if the interest of the state or political subdivision in recovery of the property or funds involved is not being adequately represented by the qui tam plaintiff.

(B) If the state or political subdivision is allowed to intervene under paragraph (A), the qui tam plaintiff shall retain principal responsibility for the action and the recovery of the parties shall be determined as if the state or political subdivision had elected not to proceed.

(g) (1) (A) If the Attorney General initiates an action pursuant to subdivision (a) or assumes control of an action initiated by a prosecuting authority pursuant to subparagraph (A) of paragraph (3) of subdivision (b), the office of the Attorney General shall receive a fixed 33 percent of the proceeds of the action or settlement of the claim, which shall be used to support its ongoing investigation and prosecution of false claims.

(B) If a prosecuting authority initiates and conducts an action pursuant to subdivision (b), the office of the prosecuting authority shall receive a fixed 33 percent of the proceeds of the action or settlement of the claim, which shall be used to support its ongoing investigation and prosecution of false claims.

(C) If a prosecuting authority intervenes in an action initiated by the Attorney General pursuant to paragraph (3) of subdivision (a) or remains a party to an action assumed by the Attorney General pursuant to subparagraph (A) of paragraph (3) of subdivision (b), the court may award the office of the prosecuting authority a portion of the Attorney General's fixed 33 percent of the recovery under subparagraph (A), taking into account the prosecuting authority's role in investigating and conducting the action.

(2) If the state or political subdivision proceeds with an action brought by a qui tam plaintiff under subdivision (c), the qui tam plaintiff shall, subject to paragraphs (4) and (5), receive at least 15 percent but not more than 33 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the qui tam plaintiff substantially contributed to the prosecution of the action. When it conducts the action, the Attorney General's office or the office of the prosecuting authority of the political subdivision shall receive a fixed 33 percent of the proceeds of the action or settlement of the claim, which shall be used to support its ongoing investigation and prosecution of false claims made against the state or political subdivision. When both the Attorney General and a prosecuting authority are involved in a qui tam action pursuant to subparagraph (C) of paragraph (6) of subdivision (c), the court at its discretion may award the prosecuting authority a portion of the Attorney General's fixed 33 percent of the recovery, taking into account the prosecuting authority's contribution to investigating and conducting the action.

(3) If the state or political subdivision does not proceed with an action under subdivision (c), the qui tam plaintiff shall, subject to paragraphs (4) and (5), receive an amount that the court decides is reasonable for collecting the civil penalty and damages on behalf of the government. The amount shall be not less than 25 percent and not more than 50 percent of the proceeds of the action or settlement and shall be paid out of these proceeds.

(4) Where the action is one provided for under paragraph (4) of subdivision (d), the present or former employee of the state or political subdivision shall not be entitled to any minimum guaranteed

recovery from the proceeds. The court, however, may award the qui tam plaintiff those sums from the proceeds as it considers appropriate, but in no case more than 33 percent of the proceeds if the state or political subdivision goes forth with the action or 50 percent if the state or political subdivision declines to go forth, taking into account the significance of the information, the role of the qui tam plaintiff in advancing the case to litigation, and the scope of, and response to, the employee's attempts to report and gain recovery of the falsely claimed funds through official channels.

(5) Where the action is one that the court finds to be based primarily on information from a present or former employee who actively participated in the fraudulent activity, the employee shall not be entitled to any minimum guaranteed recovery from the proceeds. The court, however, may award the qui tam plaintiff any sums from the proceeds that it considers appropriate, but in no case more than 33 percent of the proceeds if the state or political subdivision goes forth with the action or 50 percent if the state or political subdivision declines to go forth, taking into account the significance of the information, the role of the qui tam plaintiff in advancing the case to litigation, the scope of the present or past employee's involvement in the fraudulent activity, the employee's attempts to avoid or resist the activity, and all other circumstances surrounding the activity.

(6) The portion of the recovery not distributed pursuant to paragraphs (1) to (5), inclusive, shall revert to the state if the underlying false claims involved state funds exclusively and to the political subdivision if the underlying false claims involved political subdivision funds exclusively. If the violation involved both state and political subdivision funds, the court shall make an apportionment between the state and political subdivision based on their relative share of the funds falsely claimed.

(7) For purposes of this section, "proceeds" include civil penalties as well as double or treble damages as provided in Section 12651.

(8) If the state, political subdivision, or the qui tam plaintiff prevails in or settles any action under subdivision (c), the qui tam plaintiff shall receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable costs and attorneys' fees. All expenses, costs, and fees shall be awarded against the defendant and under no circumstances shall they be the responsibility of the state or political subdivision.

(9) If the state, a political subdivision, or the qui tam plaintiff proceeds with the action, the court may award to the defendant its reasonable attorneys' fees and expenses against the party that proceeded with the action if the defendant prevails in the action and the court finds that the claim was clearly frivolous, clearly vexatious, or brought solely for purposes of harassment.

(h) The court may stay an act of discovery of the person initiating the action for a period of not more than 60 days if the Attorney

General or local prosecuting authority show that the act of discovery would interfere with an investigation or a prosecution of a criminal or civil matter arising out of the same facts, regardless of whether the Attorney General or local prosecuting authority proceeds with the action. This showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the Attorney General or local prosecuting authority has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(i) Upon a showing by the Attorney General or local prosecuting authority that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Attorney General's or local prosecuting's authority prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, including the following:

(1) Limiting the number of witnesses the person may call.

(2) Limiting the length of the testimony of the witnesses.

(3) Limiting the person's cross-examination of witnesses.

(4) Otherwise limiting the participation by the person in the litigation.

(j) The False Claims Act Fund is hereby created in the State Treasury. Proceeds from the action or settlement of the claim by the Attorney General pursuant to this article shall be deposited into this fund. Moneys in this fund, upon appropriation by the Legislature, shall be used by the Attorney General to support the ongoing investigation and prosecution of false claims in furtherance of this article.

CHAPTER 155

An act to add and repeal Chapter 6.2 (commencing with Section 1225) of Part 1 of Division 1 of the Public Utilities Code, relating to railroads.

[Approved by Governor July 17, 1998. Filed with Secretary of State July 17, 1998.]

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

SECTION 1. Chapter 6.2 (commencing with Section 1225) is added to Part 1 of Division 1 of the Public Utilities Code, to read:

CHAPTER 6.2. OCCUPANCY OF PUBLIC GRADE CROSSING BY RAILROADS

1225. (a) Each railroad corporation operating in Stanislaus County shall be subject to the requirements of this chapter in conducting operations on and across public grade crossings.

(b) This chapter is a pilot project. This chapter shall remain in effect only until January 1, 2002, and as of that date is repealed.

1225.2 (a) Except as provided in subdivision (e), a public grade crossing that is blocked by a stopped train, other than a passenger train, shall be opened within 10 minutes, unless no vehicle or pedestrian is waiting at the crossing. The cleared crossing shall be left open until it is known that the train is ready to depart. When recoupling such a train at the crossing, movement shall be made promptly, consistent with safety.

(b) Switching over public grade crossings shall be avoided whenever reasonably possible. If not reasonably possible, public grade crossings shall be cleared frequently to allow a vehicle or pedestrian to pass and shall not be occupied continuously for longer than 10 minutes, unless no vehicle or pedestrian is waiting at the crossing.

(c) Cars or locomotives shall not be left standing, or switches left open, within the controlling circuits of automatic gate protection devices unless time-out features are provided to allow the gate arms to rise.

(d) There are no time restrictions for crossing occupancy for a moving train continuing in the same direction.

(e) These time limit provisions do not apply to any blocking resulting from compliance with state and federal laws and regulations, terrain and physical conditions, adverse weather conditions, conditions rendering the roadbed or track structure unsafe, mechanical failures, train accidents, or other occurrences over which the railroad has no control, except that the crossing shall be cleared with reasonable dispatch.

(f) If any uncontrolled blockage involves more than one grade crossing and a peace officer is on the scene, primary consideration shall be given to the clearing of that crossing which, in the peace officer's judgment, will result in the minimum delay to vehicular traffic.

(g) A crew member of a train blocking a public crossing shall immediately take all reasonable steps, consistent with the safe operation of that train, to clear the crossing upon receiving information from a peace officer, member of any fire department, as defined in Section 2801 of the Vehicle Code, or operator of an emergency vehicle, as defined in Section 165 of the Vehicle Code, that emergency circumstances require the clearing of the crossing.

(h) Any agreement between a railroad and a public agency in effect on November 1, 1974, in accordance with Section 1225.4,

subsequently approved by the commission permitting certain crossings to be blocked for a time period other than specified in this section shall prevail.

(i) Any railroad or public agency may, by formal application to the commission, request a variance from this section in connection with operations over a specific crossing where local conditions so require. The contents of application shall be in accord with Rule 15 of the commission's Rules of Practice and Procedure. The application shall specify any previous steps that may have been taken in an attempt to reach an agreement on the proposed variance and shall list any public agencies within the geographic area or any railroads that might be affected by the variance. A copy of the application shall be mailed to all listed public agencies and railroads and a certificate of service regarding the mailings shall accompany the application filed with the commission.

(j) A railroad corporation that violates any of the provisions of this chapter is guilty of a misdemeanor and is punishable by a fine not exceeding one thousand dollars ($1,000) for each violation of the provisions of this chapter. Every violation of this chapter is a separate and distinct offense, and, in case of a continuing violation where a time limit is not specified, each day's continuance of a violation shall be a separate and distinct offense, and a fine shall be imposed for each offense. Where a time limit is specified in this chapter it is a separate and distinct offense for each delay of that specified time, and a fine shall be imposed for each offense. In construing and enforcing the provisions of this chapter, the act, omission, or failure of any officer, agent, or employee of a railroad corporation, acting within the scope of his or her official duties or employment, shall in every case be the act, omission, or failure of the railroad corporation. Whenever a railroad corporation is chargeable for a violation of the provisions of this chapter, no crew member of a train shall be arrested or cited for the violation. The district attorney after filing a misdemeanor complaint shall serve it in any manner permitted by law on the person designated by the corporation for service of process in California.

(k) For the purposes of Sections 1225.2 and 1225.4, "public agency" includes the state, city, county, and city and county.

1225.4. (a) This section establishes procedures for requesting the approval of the commission of an agreement between a railroad and a public agency regarding any proposed variance from Section 1225.2.

(b) A letter jointly signed by the parties to the agreement shall be filed with the commission. The letter shall state all information pertinent to the proposed variance agreed upon by the parties, including a traffic count for the crossing for which the variance is sought. In addition to the signing parties, the letter shall specify any other railroads or any other public agencies within the geographic area that might be affected by the variance, including the

Department of the California Highway Patrol, the sheriff, and the police and fire departments. A copy of the letter shall be mailed to all affected public agencies and railroads and a certificate of service regarding the mailings shall accompany the letter filed with the commission. Any affected public agency or railroad may file with the commission an objection to the proposed variance not later than 20 days from the date on which the variance request letter was mailed to the commission.

(c) Any variance granted shall be by a resolution adopted by the commission after the commission has determined that the variance would be in the public interest. The commission shall notify all parties and affected public agencies and railroads of whatever action it may take regarding the proposed variance, and will forward a copy of the resolution, if granted, to the parties. If not granted, the parties may file a formal application seeking to obtain the variance.

CHAPTER 156

An act relating to educational resources.

[Approved by Governor July 17, 1998. Filed with Secretary of State July 17, 1998.]

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

SECTION 1. (a) It is the intent of the Legislature that, beginning in the 1999–2000 fiscal year and each fiscal year thereafter, the Legislature shall distribute cost-of-living adjustment amounts based on a sliding scale formula that promotes revenue limit equalization by reducing differences between revenue limits for districts of the same size and type.

(b) The Legislative Analyst's Office shall examine the revenue limits for the 1998–99 fiscal year and develop several options regarding a sliding scale formula, based on the distribution of the 1998–99 fiscal year revenue limits and based on different scenarios regarding the number of years over which revenue limits might be equalized. By March 1, 1999, the Legislative Analyst's office shall present these options and corresponding recommendations, in writing, to the appropriate policy and budget committees of the Legislature, and to the Governor, the Director of Finance, and the Superintendent of Public Instruction.

CHAPTER 157

An act to add Section 19775.17 to the Government Code, relating to state employees.

[Approved by Governor July 17, 1998. Filed with Secretary of State July 17, 1998.]

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

SECTION 1. Section 19775.17 is added to the Government Code, to read:

19775.17. (a) In addition to the benefits provided pursuant to Sections 19775 and 19775.1, a state employee who, as a member of the California National Guard or a United States military reserve organization, is ordered to active duty by Presidential determination that it is necessary to augment the active forces for any operational mission, or when in time of national emergency declared by the President or otherwise authorized by law, shall have the benefits provided for in subdivision (b).

(b) Any state employee to which subdivision (a) applies, while on active duty, shall receive from the state, for the duration of the event as authorized pursuant to Sections 12302 and 12304 of Title 10 of the United States Code, but not to exceed 180 calendar days, as part of his or her compensation both of the following:

(1) The difference between the amount of his or her military pay and allowances and the amount the employee would have received as a state employee, including any merit raises that would otherwise have been granted during the time the individual was on active duty. The amount an employee, as defined in Section 18526, would have received as a state employee, including any merit raises that would otherwise have been granted during the time the individual was on active duty, shall be determined by the Department of Personnel Administration.

(2) All benefits that he or she would have received had he or she not served on active duty unless the benefits are prohibited or limited by vendor contracts.

(c) Any individual receiving compensation pursuant to subdivision (b) who does not reinstate to state service following active duty, shall have that compensation treated as a loan payable with interest at the rate earned on the Pooled Money Investment Account. This subdivision shall not apply to compensation received pursuant to Section 19775.

(d) Benefits provided under paragraph (1) of subdivision (b) shall only be provided to a state employee who was not eligible to participate in a federally sponsored income protection program for National Guard personnel or military reserve personnel, or both, called into active duty, as determined by the Department of

Personnel Administration. For a state employee eligible to participate in a federally sponsored income protection program, and whose monthly salary as a state employee was higher than the sum of his or her military pay and allowances and the maximum allowable benefit under the federally sponsored income protection program, the state employee shall receive the amount payable under paragraph (1) of subdivision (b), but that amount shall be reduced by the maximum allowable benefit under the federally sponsored income protection program. For individuals who elected the federally sponsored income protection program, the state shall reimburse for the cost of the insurance premium for the period of time on active duty, not to exceed 180 calendar days.

(e) For purposes of this section, "state employee" means an employee as defined in Section 18526 or an officer or employee of the legislative, executive, or judicial department of the state.

(f) This section shall not apply to any state employee entitled to additional compensation or benefits pursuant to Section 19775.16 of this code, or Section 395.08 of the Military and Veterans Code.

CHAPTER 158

An act to add Chapter 2.91 (commencing with Section 7286.48) to Part 1.7 of Division 2 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor July 17, 1998. Filed with Secretary of State July 17, 1998.]

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

SECTION 1. Chapter 2.91 (commencing with Section 7286.48) is added to Part 1.7 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 2.91. CLOVIS TRANSACTIONS AND USE TAX

7286.48. (a) Subject to subdivision (b), the City of Clovis may levy a transactions and use tax at a rate not to exceed 0.3 percent, if an ordinance or resolution proposing that tax is approved by a majority vote of all of the members of the city council and the tax is approved by a two-thirds vote of the qualified voters of the city voting in an election on the issue.

(b) (1) Any transactions and use tax levied under this section shall be levied pursuant to the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)).

(2) The net revenues derived from a tax levied under this section shall be expended only for the provision of police and fire facilities, furnishings, and equipment.

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 uniquely severe fiscal difficulties being experienced by the City of Clovis in providing that level of public safety services that adequately protect the public.

CHAPTER 159

An act to amend Section 38630 of the Government Code, and to amend Section 830.1 of the Penal Code, relating to public safety.

[Approved by Governor July 17, 1998. Filed with Secretary of State July 17, 1998.]

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

SECTION 1. Section 38630 of the Government Code is amended to read:

38630. (a) The police department of a city is under the control of the chief of police.

(b) In municipalities which provide for police and other emergency services through a consolidated public safety agency which includes traditional law enforcement, fire protection, and other emergency services, the chief, director, or chief executive officer of such an agency shall control the agency. The chief, director, or chief executive officer of a consolidated public safety agency is a peace officer, and shall meet all of the same requirements imposed by law, regulation, or POST guidelines and recommendations as a chief of police, and he or she shall have all of the same rights, responsibilities, and privileges as does a chief of police. No one who fails to meet all of the above requirements of a chief of police and peace officer shall be appointed to the position of chief, director, or chief executive officer of a consolidated municipal public safety agency.

SEC. 2. Section 830.1 of the Penal Code is amended to read:

830.1. (a) Any sheriff, undersheriff, or deputy sheriff, employed in that capacity, of a county, any chief of police of a city or chief, director, or chief executive officer of a consolidated municipal public safety agency which performs police functions, any police officer, employed in that capacity and appointed by the chief of police or chief, director, or chief executive of a public safety agency, of a city, any chief of police, or police officer of a district (including police officers of the San Diego Unified Port District Harbor Police)

authorized by statute to maintain a police department, any marshal or deputy marshal of a municipal court, any constable or deputy constable, employed in that capacity, of a judicial district, any port warden or special officer of the Harbor Department of the City of Los Angeles, or any inspector or investigator employed in that capacity in the office of a district attorney, is a peace officer. The authority of these peace officers extends to any place in the state, as follows:

(1) As to any public offense committed or which there is probable cause to believe has been committed within the political subdivision which employs the peace officer.

(2) Where the peace officer has the prior consent of the chief of police or chief, director, or chief executive officer of a consolidated municipal public safety agency, or person authorized by him or her to give consent, if the place is within a city or of the sheriff, or person authorized by him or her to give consent, if the place is within a county.

(3) As to any public offense committed or which there is probable cause to believe has been committed in the peace officer's presence, and with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of the offense.

(b) Special agents and Attorney General investigators of the Department of Justice are peace officers, and those assistant chiefs, deputy chiefs, chiefs, deputy directors, and division directors designated as peace officers by the Attorney General are peace officers. The authority of these peace officers extends to any place in the state where a public offense has been committed or where there is probable cause to believe one has been committed.

(c) Any deputy sheriff of a county of the first class who is employed to perform duties exclusively or initially relating to custodial assignments with responsibilities for maintaining the operations of county custodial facilities, including the custody, care, supervision, security, movement, and transportation of inmates, is a peace officer whose authority extends to any place in the state only while engaged in the performance of the duties of his or her respective employment and for the purpose of carrying out the primary function of employment relating to his or her custodial assignments, or when performing other law enforcement duties directed by his or her employing agency during a local state of emergency.

CHAPTER 160

An act to amend Section 26726 of the Government Code, relating to keeper fees.

[Approved by Governor July 17, 1998. Filed with Secretary of State July 17, 1998.]

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

SECTION 1. Section 26726 of the Government Code is amended to read:

26726. (a) The fee for keeping and caring for property under a writ of attachment, execution, possession, or sale shall not exceed one hundred dollars ($100) when necessarily employed for any eight-hour period or any part thereof. If an additional keeper or keepers are required during these periods, the fee for the additional keeper or keepers shall be the same as fixed, but, in no event shall any one keeper receive more than one hundred seventy-five dollars ($175) during any 24-hour period when so employed.

(b) In addition to the fees provided by Section 26721, the fee for maintaining custody of property under levy by the use of a keeper is twenty-one dollars ($21) for each day custody is maintained after the first day.

(c) Notwithstanding any other fee charged, a keeper shall receive twenty-five dollars ($25) when, pursuant to Section 26738, a levying officer prepares a not-found return.

(d) In addition to the fees allowed by this section, a keeper shall receive a ten dollar ($10) per diem compensation for meals and mileage traveled in the course of performing his or her duties.

CHAPTER 161

An act to amend Section 19401 of the Business and Professions Code, relating to horse racing.

[Approved by Governor July 17, 1998. Filed with Secretary of State July 17, 1998.]

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

SECTION 1. Section 19401 of the Business and Professions Code is amended to read:

19401. The intent of this chapter is to allow parimutuel wagering on horse races, while:

(a) Assuring protection of the public;

(b) Encouraging agriculture and the breeding of horses in this state; and

(c) Supporting the network of California fairs.

(d) Providing for maximum expansion of horse racing opportunities in the public interest.

(e) Providing uniformity of regulation for each type of horse racing.

CHAPTER 162

An act to add Section 7.5 to the Penal Code, relating to interpretation of criminal provisions.

[Approved by Governor July 17, 1998. Filed with Secretary of State July 17, 1998.]

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

SECTION 1. Section 7.5 is added to the Penal Code, to read:

7.5. Whenever any offense is described in this code, the Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code), or the Welfare and Institutions Code, as criminal conduct and as a violation of a specified code section or a particular provision of a code section, in the case of any ambiguity or conflict in interpretation, the code section or particular provision of the code section shall take precedence over the descriptive language. The descriptive language shall be deemed as being offered only for ease of reference unless it is otherwise clearly apparent from the context that the descriptive language is intended to narrow the application of the referenced code section or particular provision of the code section.

CHAPTER 163

An act to amend Section 1734.5 of the Insurance Code, relating to insurance.

[Approved by Governor July 18, 1998. Filed with Secretary of State July 20, 1998.]

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

SECTION 1. Section 1734.5 of the Insurance Code is amended to read:

1734.5. (a) If fiduciary funds, as defined in Section 1733, are received by any person licensed, whether under a permanent license, restricted license, temporary license, or certificate of convenience, to act in any of the capacities specified in Section 1733, and the funds are not remitted, or maintained pursuant to subdivisions (a) and (b) of Section 1734, the funds shall be maintained as follows: (1) in United States government bonds and treasury certificates or other obligations for which the full faith and credit of the United States are pledged for payment of principal and interest; (2) in certificates of deposit of banks or savings and loan associations licensed by any state government within the United

States, or the United States government; (3) in repurchase agreements collateralized by securities issued by the United States government; or (4) in (A) bonds and other obligations of this state or of any local agency or district of the State of California having the power, without limit as to rate or amount, to levy taxes or assessments upon all property within its boundaries subject to taxation or assessment by the local agency or district to pay the principal and interest of the obligations, and (B) revenue bonds and other obligations payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by this state, or a local agency or district or by a department, board, agency or authority thereof, the bonds and obligations described in subparagraphs (A) and (B) to either have maturities of not more than one year, or afford the holder of the obligation the unilateral right to redeem the obligation from its issuer within one year from date of purchase at an amount equal to or greater than its par value, and the bonds and obligations shall be required to be rated at least Aa1, MIG-1/VMIG-1 or Prime-1 by Moody's Investor Service, Inc., or AA, SP-1 or A-1 by Standard and Poor's Corporation.

For the fiduciary funds maintained as provided in paragraphs (1) to (4), inclusive, the bonds, certificates, obligations, certificates of deposit, and repurchase agreements shall be valued on the basis of their acquisition cost.

(b) As a condition to maintaining the fiduciary funds pursuant to this section, a written agreement shall be obtained from each and every insurer or person entitled thereto authorizing the maintenance and the retention of any earnings accruing on the funds.

(c) Evidence of the funds shall be maintained on California business by a bank as defined in Section 102 of the Financial Code, or by a savings and loan association as defined in Section 5057 or 11000 of the Financial Code in a custodian or trust account in California separate from any other funds, in an amount at least equal to the premiums and return premiums, net of commissions received by him or her and unpaid to the persons entitled thereto, or, at their discretion or pursuant to a written contract, for the account of these persons. However, the persons may commingle with the fiduciary funds any additional funds as he or she may deem prudent for the purpose of advancing premiums, establishing reserves for the paying of return premiums, or for any contingencies as may arise in his or her business of receiving and transmitting premium or return premium funds.

(d) The commissioner shall not have jurisdiction over any disputes arising between parties concerning the maintenance of fiduciary funds pursuant to this section. However, this subdivision shall not otherwise affect the authority granted to the commissioner over fiduciary funds by other provisions of this code, or regulations

adopted pursuant thereto. As used in this subdivision, the term "parties" shall not include the commissioner.

(e) Investment losses to the principal of fiduciary funds maintained pursuant to this section are the responsibility of the person licensed, whether under a permanent license, restricted license, temporary license, or certificate of convenience, to act in any of the capacities specified in Section 1733, and any obligation to insurers or other persons entitled to the fiduciary funds shall in no way be diminished due to any loss in the value to the principal of the fiduciary funds held pursuant to this section.

CHAPTER 164

An act to amend Sections 13575, 13576, 13579, 13580, and 13581 of the Water Code, relating to water.

[Approved by Governor July 18, 1998. Filed with Secretary of State July 20, 1998.]

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

SECTION 1. Section 13575 of the Water Code is amended to read:

13575. (a) This chapter shall be known and may be cited as the Water Recycling Act of 1991.

(b) As used in this chapter, the following terms have the following meanings:

(1) "Entity responsibility for groundwater replenishment" means any person or entity authorized by statute or court order to manage a groundwater basin and acquire water for groundwater replenishment.

(2) "Recycled water producer" means any local public entity that produces recycled water.

(3) "Recycled water wholesaler" means any local public entity that distributes recycled water to retail water suppliers and which has constructed, or is constructing, a recycled water distribution system.

(4) "Retail water supplier" means any local entity, including a public agency, city, county, or private water company, that provides retail water service.

SEC. 2. Section 13576 of the Water Code is amended to read:

13576. The Legislature hereby makes the following findings and declarations:

(a) The State of California is subject to periodic drought conditions.

(b) The development of traditional water resources in California has not kept pace with the state's population, which is growing at the rate of over 700,000 per year and which is anticipated to reach 36 million by the year 2010.

(c) There is a need for a reliable source of water for uses not related to the supply of potable water to protect investments in agriculture, greenbelts, and recreation and to replenish groundwater basins, and protect and enhance fisheries, wildlife habitat, and riparian areas.

(d) The environmental benefits of recycled water include a reduced demand for water in the Sacramento-San Joaquin Delta which is otherwise needed to maintain water quality, reduced discharge of waste into the ocean, and the enhancement of groundwater basins, recreation, fisheries, and wetlands.

(e) The use of recycled water has proven to be safe from a public health standpoint, and the State Department of Health Services is updating regulations for the use of recycled water.

(f) The use of recycled water is a cost-effective, reliable method of helping to meet California's water supply needs.

(g) The development of the infrastructure to distribute recycled water will provide jobs and enhance the economy of the state.

(h) Retail water suppliers and recycled water producers and wholesalers should promote the substitution of recycled water for potable water and imported water in order to maximize the appropriate cost-effective use of recycled water in California.

(i) Recycled water producers, retail water suppliers, and entities responsible for groundwater replenishment should cooperate in joint technical, economic, and environmental studies, as appropriate, to determine the feasibility of providing recycled water service.

(j) Retail water suppliers and recycled water producers and wholesalers should be encouraged to enter into contracts to facilitate the service of recycled and potable water by the retail water suppliers in their service areas in the most efficient and cost-effective manner.

(k) Recycled water producers and wholesalers and entities responsible for groundwater replenishment should be encouraged to enter into contracts to facilitate the use of recycled water for groundwater replenishment if recycled water is available and the authorities having jurisdiction approve its use.

(*l*) Wholesale prices set by recycled water producers and recycled water wholesalers, and rates that retail water suppliers are authorized to charge for recycled water, should reflect an equitable sharing of the costs and benefits associated with the development and use of recycled water.

SEC. 3. Section 13579 of the Water Code is amended to read:

13579. (a) In order to achieve the goals established in Section 13577, retail water suppliers shall identify potential uses for recycled water within their service areas, potential customers for recycled water service within their service areas, and, within a reasonable time, potential sources of recycled water.

(b) Recycled water producers and recycled water wholesalers may also identify potential uses for recycled water, and may assist

retail water suppliers in identifying potential customers for recycled water service within the service areas of those retail water suppliers.

(c) Recycled water producers, retail water suppliers, and entities responsible for groundwater replenishment may cooperate in joint technical, economic, and environmental studies, as appropriate, to determine the feasibility of providing recycled water service and recycled water for groundwater replenishment consistent with the criteria set forth in paragraphs (1) to (3), inclusive, of subdivision (a) of Section 13550 and in accordance with Section 60320 of Title 22 of the California Code of Regulations.

SEC. 4. Section 13580 of the Water Code is amended to read:

13580. (a) A retail water supplier that has identified a potential use or customer pursuant to Section 13579 may apply to a recycled water producer or recycled water wholesaler for a recycled water supply.

(b) A recycled water producer or recycled water wholesaler that has identified a potential use or customer pursuant to Section 13579 may, in writing, request a retail water supplier to enter into an agreement to provide recycled water to the potential customer.

(c) An entity responsible for groundwater replenishment that has identified the potential use of recycled water for groundwater replenishment purposes may, in writing, request a recycled water producer or recycled water wholesaler to enter into an agreement to provide recycled water for that purpose.

SEC. 5. Section 13581 of the Water Code is amended to read:

13581. If there is a failure to agree on terms and conditions for a recycled water supply agreement within six months after the receipt of the application for recycled water pursuant to Section 13580, any party may request a formal mediation process. If the parties agree to participate in the formal mediation process, the parties shall commence mediation within four months after the mediation request is made. If the parties cannot agree on a mediator, the director shall appoint a mediator. The mediator may recommend to the parties appropriate terms and conditions applicable to the service of recycled water. The cost for the services of the mediator shall be divided equally among the parties to the mediation and shall not exceed twenty thousand dollars ($20,000).

CHAPTER 165

An act to amend Section 1231 of the Unemployment Insurance Code, relating to employment.

[Approved by Governor July 18, 1998. Filed with Secretary of State July 20, 1998.]

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

SECTION 1. Section 1231 of the Unemployment Insurance Code is amended to read:

1231. (a) The department shall develop and implement a taxpayer education and information program directed at, but not limited to, the following:

(1) Taxpayer or industry groups.

(2) Department audit and compliance staff.

(3) (A) Identifying forms, procedures, regulations, or laws that are confusing and lead to taxpayer errors.

(B) Taking appropriate action, including recommending remedial legislation to change those items identified pursuant to subparagraph (A).

(b) The education and information program described in subdivision (a) shall include all of the following:

(1) Communication with the taxpayer or industry groups which explains in simplified terms the most common errors made by taxpayers and how those errors may be avoided or corrected.

(2) Participation in small business seminars and similar programs organized by state and local agencies and may include participation in seminars organized by private organizations.

(3) Revision of taxpayer educational materials currently produced by the department to explain in simplified terms the most common errors made by taxpayers and how those errors may be avoided or corrected.

(4) Implementation of a continuing education program for audit personnel to include the application of new legislation to taxpayer activities and to minimize recurrent taxpayer noncompliance or inconsistency of administration.

CHAPTER 166

An act to amend Section 532d of the Penal Code, relating to fraudulent solicitations.

[Approved by Governor July 18, 1998. Filed with Secretary of State July 20, 1998.]

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

SECTION 1. Section 532d of the Penal Code is amended to read:

532d. (a) Any person who solicits or attempts to solicit or receives money or property of any kind for a charitable, religious or eleemosynary purpose and who, directly or indirectly, makes, utters, or delivers, either orally or in writing, an unqualified statement of fact concerning the purpose or organization for which the money or

property is solicited or received, or concerning the cost and expense of solicitation or the manner in which the money or property or any part thereof is to be used, which statement is in fact false and was made, uttered, or delivered by that person either willfully and with knowledge of its falsity or negligently without due consideration of those facts which by the use of ordinary care he or she should have known, is guilty of a misdemeanor, and is punishable by imprisonment in the county jail for not more than one year, by a fine not exceeding five thousand dollars ($5,000), or by both that imprisonment and fine.

(b) An offense charged in violation of this section shall be proven by the testimony of one witness and corroborating circumstances.

(c) Nothing contained in this section shall be construed to limit the right of any city, county, or city and county to adopt regulations for charitable solicitations which are not in conflict with 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 that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 167

An act to amend Section 170.6 of the Code of Civil Procedure, relating to court proceedings.

[Approved by Governor July 18, 1998. Filed with Secretary of State July 20, 1998.]

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

SECTION 1. Section 170.6 of the Code of Civil Procedure is amended to read:

170.6. (1) No judge, court commissioner, or referee of any superior or municipal court of the State of California shall try any civil or criminal action or special proceeding of any kind or character nor hear any matter therein that involves a contested issue of law or fact when it shall be established as hereinafter provided that the judge or court commissioner is prejudiced against any party or attorney or the

interest of any party or attorney appearing in the action or proceeding.

(2) Any party to or any attorney appearing in any such action or proceeding may establish this prejudice by an oral or written motion without notice supported by affidavit or declaration under penalty of perjury or an oral statement under oath that the judge, court commissioner, or referee before whom the action or proceeding is pending or to whom it is assigned is prejudiced against any such party or attorney or the interest of the party or attorney so that the party or attorney cannot or believes that he or she cannot have a fair and impartial trial or hearing before the judge, court commissioner, or referee. Where the judge, other than a judge assigned to the case for all purposes, court commissioner, or referee assigned to or who is scheduled to try the cause or hear the matter is known at least 10 days before the date set for trial or hearing, the motion shall be made at least five days before that date. If directed to the trial of a cause where there is a master calendar, the motion shall be made to the judge supervising the master calendar not later than the time the cause is assigned for trial. If directed to the trial of a cause that has been assigned to a judge for all purposes, the motion shall be made to the assigned judge or to the presiding judge by a party within 10 days after notice of the all purpose assignment, or if the party has not yet appeared in the action, then within 10 days after the appearance. If the court in which the action is pending is authorized to have no more than one judge and the motion claims that the duly elected or appointed judge of that court is prejudiced, the motion shall be made before the expiration of 30 days from the date of the first appearance in the action of the party who is making the motion or whose attorney is making the motion. In no event shall any judge, court commissioner, or referee entertain the motion if it be made after the drawing of the name of the first juror, or if there be no jury, after the making of an opening statement by counsel for plaintiff, or if there is no such statement, then after swearing in the first witness or the giving of any evidence or after trial of the cause has otherwise commenced. If the motion is directed to a hearing (other than the trial of a cause), the motion shall be made not later than the commencement of the hearing. In the case of trials or hearings not herein specifically provided for, the procedure herein specified shall be followed as nearly as may be. The fact that a judge, court commissioner, or referee has presided at or acted in connection with a pretrial conference or other hearing, proceeding or motion prior to trial and not involving a determination of contested fact issues relating to the merits shall not preclude the later making of the motion provided for herein at the time and in the manner hereinbefore provided.

A motion under this paragraph may be made following reversal on appeal of a trial court's decision, or following reversal on appeal of a trial court's final judgment, if the trial judge in the prior proceeding

is assigned to conduct a new trial on the matter. Notwithstanding paragraph (3) of this section, the party who filed the appeal that resulted in the reversal of a final judgment of a trial court may make a motion under this section regardless of whether that party or side has previously done so. The motion shall be made within 60 days after the party or the party's attorney has been notified of the assignment.

(3) If the motion is duly presented and the affidavit or declaration under penalty of perjury is duly filed or such oral statement under oath is duly made, thereupon and without any further act or proof, the judge supervising the master calendar, if any, shall assign some other judge, court commissioner, or referee to try the cause or hear the matter. In other cases, the trial of the cause or the hearing of the matter shall be assigned or transferred to another judge, court commissioner, or referee of the court in which the trial or matter is pending or, if there is no other judge, court commissioner, or referee of the court in which the trial or matter is pending, the Chair of the Judicial Council shall assign some other judge, court commissioner, or referee to try the cause or hear the matter as promptly as possible. Except as provided in this section, no party or attorney shall be permitted to make more than one such motion in any one action or special proceeding pursuant to this section; and in actions or special proceedings where there may be more than one plaintiff or similar party or more than one defendant or similar party appearing in the action or special proceeding, only one motion for each side may be made in any one action or special proceeding.

(4) Unless required for the convenience of the court or unless good cause is shown, a continuance of the trial or hearing shall not be granted by reason of the making of a motion under this section. If a continuance is granted, the cause or matter shall be continued from day to day or for other limited periods upon the trial or other calendar and shall be reassigned or transferred for trial or hearing as promptly as possible.

(5) Any affidavit filed pursuant to this section shall be in substantially the following form:

(Here set forth court and cause)

State of California, County of _____	ss.	PEREMPTORY CHALLENGE

_____, being duly sworn, deposes and says: That he or she is a party (or attorney for a party) to the within action (or special proceeding). That _____ the judge, court commissioner, or referee before whom the trial of the (or a hearing in the) aforesaid action (or special proceeding) is pending (or to whom it is assigned) is prejudiced against the party (or his or her attorney) or the interest of the party (or his or her attorney) so that affiant cannot or believes that he or she cannot have a fair and impartial trial or hearing before the judge, court commissioner, or referee.

Subscribed and sworn to before me this
_____ day of _____, 19____.
(Clerk or notary public or other
officer administering oath)

(6) Any oral statement under oath or declaration under penalty of perjury made pursuant to this section shall include substantially the same contents as the affidavit above.

(7) Nothing in this section shall affect or limit Section 170 or Title 4 (commencing with Section 392) of Part 2, and this section shall be construed as cumulative thereto.

(8) If any provision of this section or the application to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the section that can be given effect without the invalid provision or application and to this end the provisions of this section are declared to be severable.

CHAPTER 168

An act to amend Section 9745 of, and to add Sections 9744.5 and 9749.3 to, the Business and Professions Code, relating to cremated remains.

[Approved by Governor July 18, 1998. Filed with Secretary of State July 20, 1998.]

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

SECTION 1. Section 9744.5 is added to the Business and Professions Code, to read:

9744.5. (a) Every cremated remains disposer shall do both of the following:

(1) Dispose of cremated remains within 60 days of the receipt of those remains, unless a written signed reason for a delay is presented

to the person with the right to control the disposition of the remains under Section 7100 of the Health and Safety Code.

(2) Provide the Cemetery Program with the address and phone number of any storage facility being used by the registrant to store cremated remains. Cremated remains shall be stored in a place free from exposure to the elements, and shall be responsibly maintained until disposal. The Cemetery Program and its representatives shall conduct, on an annual basis, random inspections of the operations of 5 to 10 percent of the registered cremated remains disposers, and is authorized to inspect any place used by a cremated remains disposer for the storage of cremated remains without notice to the cremated remains disposer.

(b) A violation of the requirements of this section is grounds for disciplinary action.

SEC. 2. Section 9745 of the Business and Professions Code is amended to read:

9745. Each cremated remains disposer shall file, and thereafter maintain an updated copy of, an annual report on a form prescribed by the Cemetery Program. The report shall include, but not be limited to, the names of the deceased persons whose cremated remains were disposed of, the dates of receipt of the cremated remains, the names and addresses of the persons who authorized disposal of those remains, the dates and locations of disposal of those remains, and the means and manner of disposition. The report shall cover the fiscal year ending on June 30th and shall be filed with the Cemetery Program no later than September 30th of each year.

SEC. 3. Section 9749.3 is added to the Business and Professions Code, to read:

9749.3. Any cremated remains disposer who stores cremated remains in a reckless manner that results in either of the following is guilty of a public offense punishable by imprisonment in a county jail not exceeding one year or by a fine not to exceed five thousand dollars ($5,000), or by both that fine and imprisonment:

(a) Loss of all or part of the cremated remains.

(b) Inability to individually identify the cremated remains.

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 that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative

on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 169

An act to amend Section 22850.5 of the Vehicle Code, relating to vehicles.

[Approved by Governor July 18, 1998. Filed with Secretary of State July 20, 1998.]

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

SECTION 1. Section 22850.5 of the Vehicle Code is amended to read:

22850.5. (a) A city, county, or city and county, or a state agency may adopt a regulation, ordinance, or resolution establishing procedures for the release of properly impounded vehicles and for the imposition of a charge equal to its administrative costs relating to the removal, impound, storage, or release of the vehicles. Those administrative costs may be waived by the local or state authority upon verifiable proof that the vehicle was reported stolen at the time the vehicle was removed.

(b) The following apply to any charges imposed for administrative costs pursuant to subdivision (a):

(1) The charges shall only be imposed on the registered owner or the agents of that owner and shall not include any vehicle towed under an abatement program or sold at a lien sale pursuant to Sections 3068.1 to 3074, inclusive, of, and Section 22851 of, the Civil Code unless the sale is sufficient in amount to pay the lienholder's total charges and proper administrative costs.

(2) Any charges shall be collected by the local or state authority at the time of release.

(3) The charges shall be in addition to any other charges authorized or imposed pursuant to this code.

(4) No charge may be imposed for any hearing or appeal relating to the removal, impound, storage, or release of a vehicle unless that hearing or appeal was requested in writing by the registered or legal owner of the vehicle or an agent of that registered or legal owner. In addition, the charge may be imposed only upon the person requesting that hearing or appeal.

CHAPTER 170

An act to amend Section 11 of, and to add Sections 29.6 and 29.7 to, the Castaic Lake Water Agency Law (Chapter 28 of the Statutes of 1962, First Extraordinary Session), relating to the Castaic Lake Water Agency.

[Approved by Governor July 18, 1998. Filed with Secretary of State July 20, 1998.]

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

SECTION 1. Section 11 of the Castaic Lake Water Agency Law (Chapter 28 of the Statutes of 1962, First Extraordinary Session) is amended to read:

Sec. 11. The board of directors shall be the governing body of the agency. The board shall hold its first meeting as soon as possible after the appointment and certification of the first board of directors. The board shall choose one of its members to be president, and shall thereupon provide for the time and place of holding its meetings and the manner in which its special meetings may be called. All legislative sessions of the board, whether regular or special, shall be open to the public. A majority of the board shall constitute a quorum for the transaction of business. At its first meeting in the month of January of each odd-numbered year, the board shall choose one of its members president. The board, by majority vote, may appoint from its members one vice president and may define the duties of the vice president.

SEC. 2. Section 29.6 is added to the Castaic Lake Water Agency Law (Chapter 28 of the Statutes of 1962, First Extraordinary Session), to read:

Sec. 29.6. (a) Notwithstanding any other provision of law, the board of directors may adopt a multiyear capital budget for the agency. The multiyear capital budget may not encompass more than three agency fiscal years. Except for the length of time, the multiyear capital budget shall meet the requirements pertaining to an annual capital budget.

(b) (1) Prior to the adoption of a multiyear capital budget, the board shall hold a public hearing noticed using the means set forth in Section 29.3.

(2) The board of directors may adopt, by resolution, reasonable procedures to facilitate the adoption and funding of a multiyear capital budget. Any procedures adopted by the board shall facilitate the making of findings and determinations otherwise required or authorized for the adoption and funding of an annual capital budget pursuant to Sections 29.1 to 29.4, inclusive.

(3) Subject to the notice and public hearing requirements imposed by paragraph (1), any multiyear capital budget may be

amended by the board of directors during the term of the budget. Schedules of rates, charges, fees, and assessments may not be increased without a prior public hearing noticed as required by any applicable statute or provision of the California Constitution.

SEC. 3. Section 29.7 is added to the Castaic Lake Water Agency Law (Chapter 28 of the Statutes of 1962, First Extraordinary Session), to read:

Sec. 29.7. Notwithstanding any other provision of law, the board of directors may adopt a facility capacity fee as part of its annual capital budget or multiyear capital budget and may allow the facility capacity fee for any water service area to remain in effect until the board, subject to applicable notice and hearing requirements, changes or repeals the fee by resolution.

CHAPTER 171

An act to add Section 1463.17 to the Penal Code, relating to fines and forfeitures.

[Approved by Governor July 18, 1998. Filed with Secretary of State July 20, 1998.]

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

SECTION 1. Section 1463.17 is added to the Penal Code, to read:

1463.17. (a) In a county of the 19th class, notwithstanding any other provision of this chapter, of the moneys deposited with the county treasurer pursuant to Section 1463, fifty dollars ($50) for each conviction of a violation of Section 23103, 23104, 23152, or 23153 of the Vehicle Code shall be deposited in a special account to be used exclusively to pay the cost incurred by the county or a city or special district within the county, with approval of the board of supervisors, for performing analysis of blood, breath, or urine for alcohol content or for the presence of drugs, or for services related to the testing.

(b) The application of this section shall not reduce the county's remittance to the state specified in paragraph (2) of subdivision (b) of Section 77201 of, and paragraph (2) of subdivision (b) of, Section 77201.1 of the Government Code.

CHAPTER 172

An act to repeal Section 11221 of the Health and Safety Code, relating to controlled substances.

[Approved by Governor July 18, 1998. Filed with
Secretary of State July 20, 1998.]

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

SECTION 1. Section 11221 of the Health and Safety Code is repealed.

CHAPTER 173

An act to repeal Chapter 2 (commencing with Section 35100) of Part 3 of Division 24 of the Health and Safety Code, relating to housing.

[Approved by Governor July 18, 1998. Filed with
Secretary of State July 20, 1998.]

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

SECTION 1. Chapter 2 (commencing with Section 35100) of Part 3 of Division 24 of the Health and Safety Code is repealed.

SEC. 2. The repeal of Chapter 2 (commencing with Section 35100) of Part 3 of Division 24 of the Health and Safety Code by Section 1 of this act shall not affect the status of any land chest corporation that was formed pursuant to that chapter prior to the effective date of this act. The Commissioner of Corporations may apply, as if operative, the provisions of that chapter that were in effect immediately prior to its repeal, to any land chest corporation that was formed pursuant to that chapter prior to the effective date of this act.

CHAPTER 174

An act to amend Section 17213 of the Financial Code, relating to financial institutions.

[Approved by Governor July 18, 1998. Filed with
Secretary of State July 20, 1998.]

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

SECTION 1. Section 17213 of the Financial Code is amended to read:

17213. (a) An escrow agent shall not transact business pursuant to this division under any other name than that set forth in the articles of incorporation as filed with the commissioner.

(b) An escrow agent's license is not transferable or assignable. Further, no license may be acquired, either in whole or in part, directly or indirectly, through stock purchase, foreclosure pursuant to a pledge or hypothecation, or other devices without the consent of the commissioner. Prior to the transfer of 10 percent or more of the shares of an escrow agent, the escrow agent shall file a new application for licensure as required by Section 17201. However, a new application for licensure shall not be required to be filed by the escrow agent if the transfer of 10 percent or more of the shares of the escrow agent will be made by an existing shareholder to another existing shareholder who also owns 10 percent or more of the shares of the escrow agent before the transfer.

CHAPTER 175

An act to amend Section 13401.5 of the Corporations Code, relating to licensed acupuncturists.

[Approved by Governor July 18, 1998. Filed with Secretary of State July 20, 1998.]

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

SECTION 1. Section 13401.5 of the Corporations Code is amended to read:

13401.5. Notwithstanding subdivision (d) of Section 13401 and any other provision of law, the following licensed persons may be shareholders, officers, directors, or professional employees of the professional corporations designated in this section so long as the sum of all shares owned by those licensed persons does not exceed 49 percent of the total number of shares of the professional corporation so designated herein, and so long as the number of those licensed persons owning shares in the professional corporation so designated herein does not exceed the number of persons licensed by the governmental agency regulating the designated professional corporation:

(a) Medical corporation.

(1) Licensed doctors of podiatric medicine.

(2) Licensed psychologists.

(3) Registered nurses.

(4) Licensed optometrists.

(5) Licensed marriage, family, and child counselors.

(6) Licensed clinical social workers.

(7) Licensed physician assistants.

(8) Licensed chiropractors.
(9) Licensed acupuncturists.
(b) Podiatric medical corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Registered nurses.
(4) Licensed optometrists.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(c) Psychological corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Registered nurses.
(4) Licensed optometrists.
(5) Licensed marriage, family, and child counselors.
(6) Licensed clinical social workers.
(7) Licensed chiropractors.
(8) Licensed acupuncturists.
(d) Speech-language pathology corporation.
(1) Licensed audiologists.
(e) Audiology corporation.
(1) Licensed speech-language pathologists.
(f) Nursing corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Licensed optometrists.
(5) Licensed marriage, family, and child counselors.
(6) Licensed clinical social workers.
(7) Licensed physician assistants.
(8) Licensed chiropractors.
(9) Licensed acupuncturists.
(g) Marriage, family, and child counseling corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Licensed clinical social workers.
(4) Registered nurses.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(h) Licensed clinical social worker corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Licensed marriage, family, and child counselors.
(4) Registered nurses.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(i) Physician assistants corporation.
(1) Licensed physicians and surgeons.

(2) Registered nurses.
(3) Licensed acupuncturists.
(j) Optometric corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Registered nurses.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(k) Chiropractic corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Registered nurses.
(5) Licensed optometrists.
(6) Licensed marriage, family, and child counselors.
(7) Licensed clinical social workers.
(8) Licensed acupuncturists.
(*l*) Acupuncture corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Registered nurses.
(5) Licensed optometrists.
(6) Licensed marriage, family, and child counselors.
(7) Licensed clinical social workers.
(8) Licensed physician assistants.
(9) Licensed chiropractors.

CHAPTER 176

An act to amend Section 11752.7 of the Insurance Code, relating to workers' compensation insurance.

[Approved by Governor July 18, 1998. Filed with Secretary of State July 20, 1998.]

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

SECTION 1. Section 11752.7 of the Insurance Code is amended to read:

11752.7. (a) A licensed rating organization may make available experience rating information contained in its records to any insurer admitted to transact workers' compensation insurance in this state or to any insurance agent or broker that is licensed to transact workers' compensation insurance in this state, if the insurer, agent, or broker

submits a written request to the licensed rating organization stating all of the following:

(1) That the requesting insurer is admitted to transact workers' compensation insurance in this state, or that the requesting agent or broker is licensed to transact workers' compensation insurance in this state.

(2) The information requested.

(3) The information requested will be used to facilitate the transaction of workers' compensation insurance by the insurer, agent, or broker.

(4) The information received will not be released by the agent or broker to others, except to facilitate the transaction of workers' compensation insurance by the requesting agent or broker.

(b) The licensed rating organization may, but shall not be required to, verify that an insurer requesting information under this section is admitted to transact workers' compensation insurance in this state or that an insurance agent or broker requesting information under this section is licensed to transact workers' compensation insurance in this state.

(c) For purposes of this section:

(1) "Experience rating information" means information released on microfiche or in other forms or media by a licensed rating organization which identifies all experience-rated employers, and the experience ratings and classifications or experience modifications which apply or applied to those employers.

(2) "Transaction," as applied to workers' compensation insurance, includes any of the following:

(A) Solicitation.

(B) Negotiations preliminary to execution of a contract of insurance.

(C) Execution of a contract of insurance.

(D) Resolution of matters arising out of the contract and subsequent to its execution.

(d) Experience rating information made available pursuant to this section shall be confidential and shall not be used for any purpose other than to facilitate the transaction of workers' compensation insurance by the insurer, agent, or broker receiving the information pursuant to this section.

(e) Nothing in this section prohibits information services companies in the business of publishing or providing experience rating information immediately prior to September 15, 1989, from continuing on or after September 15, 1989, to receive and provide to others experience rating information from whatever sources and in whatever forms or media.

(f) No licensed rating organization, member of a licensed rating organization, member of a committee of a licensed rating organization when acting in its capacity as a member of the committee, or officer or employee of a licensed rating organization

when acting within the scope of his or her employment, shall be liable to any person for injury, personal or otherwise, or damages caused or alleged to have been caused, either directly or indirectly, by the disclosure of rating information pursuant to this section, or to the members of such organizations, or for the accuracy or completeness of the information disclosed.

(g) This section shall not be construed as implying the existence of liability in circumstances not defined in this section, nor as implying a legislative recognition that, except for the enactment of this section, a liability has existed or would exist in the circumstances stated in this section.

(h) This section shall not be construed as limiting any authority of a licensed rating organization to disclose information contained in its records to others.

CHAPTER 177

An act to amend Section 113996 of the Health and Safety Code, relating to retail food facilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 18, 1998. Filed with Secretary of State July 20, 1998.]

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

SECTION 1. Section 113996 of the Health and Safety Code is amended to read:

113996. (a) All ready-to-eat foods prepared at the food facility from raw or incompletely cooked animal tissues shall be thoroughly cooked prior to serving. For purposes of this subdivision, food shall be thoroughly cooked if it conforms to the following requirements, except as specified in subdivision (b):

(1) Comminuted meat or any food containing comminuted meat shall be heated to a minimum internal temperature of 69 degrees Celsius (157 degrees Fahrenheit), or an optional internal temperature of 68 degrees Celsius (155 degrees Fahrenheit) for 15 seconds.

(2) Eggs and foods containing raw eggs shall be heated to a minimum internal temperature of 63 degrees Celsius (145 degrees Fahrenheit).

(3) Pork shall be heated to a minimum internal temperature of 68 degrees Celsius (155 degrees Fahrenheit).

(4) Poultry, comminuted poultry, stuffed fish, stuffed meat, stuffed poultry, and any food stuffed with fish, meat, or poultry shall be heated to a minimum internal temperature of 74 degrees Celsius (165 degrees Fahrenheit).

(b) When foods containing raw or incompletely cooked animal tissues specified in this section are prepared in a microwave oven, they shall be heated at a minimum internal temperature of 14 degrees Celsius (25 degrees Fahrenheit) above the minimum temperatures specified in subdivision (a). During microwaving, the food shall be completely enclosed in a container and periodically stirred or rotated to assure even heat distribution. Upon the completion of microwaving, the enclosed food shall be left standing for a minimum of two minutes to assure temperature equilibrium. This subdivision does not apply to the heating of ready-to-eat cooked foods or the defrosting of food items.

(c) (1) Ready-to-eat foods made from or containing eggs or comminuted meat, or single pieces of meat, including beef, veal, lamb, pork, fish, and seafood, that have not been thoroughly cooked as provided in this section may be served if the consumer specifically orders that these foods be individually prepared less than thoroughly cooked.

(2) In addition to paragraph (1), a ready-to-eat food containing a raw or less than thoroughly cooked egg as an ingredient, including, but not limited to, a salad dressing or sauce, may be served if the facility notifies the consumer, either orally or in writing, that the food contains that ingredient, and the consumer does not object to the preparation.

(d) The department shall authorize alternative time and temperature minimum heating requirements to thoroughly cook the food identified in this section when the food facility or person demonstrates to the department that the alternative heating requirements provide an equivalent level of food safety.

(e) For purposes of this section, "meat" means the tissue of animals used as food, including beef, veal, lamb, pork, and other edible animals, except eggs, fish, and poultry, that is offered for human consumption.

(f) It is the intent of the Legislature that the requirements of this section be uniformly enforced. The department shall train and provide guidance to local health departments to promote uniform enforcement of the requirements specified 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, that is enacted before January 1, 2001, deletes or extends that date.

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

In order to eliminate confusion among restaurateurs and regulators regarding the legal requirements for serving traditional foods, and to remove unnecessary restraints on California's

restaurant business, at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 178

An act to amend Sections 50124, 50126, 50306, 50316, and 50700 of the Financial Code, relating to residential mortgage lending.

[Approved by Governor July 18, 1998. Filed with Secretary of State July 20, 1998.]

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

SECTION 1. Section 50124 of the Financial Code is amended to read:

50124. (a) A license application must be accompanied by an exhibit containing statements that the applicant agrees to do the following:

(1) To maintain staff adequate to meet the requirements of this division, as prescribed by rule or order of the commissioner.

(2) To keep and maintain for 36 months from the date of final entry the business records and other information required by law or rules of the commissioner regarding any mortgage loan made or serviced in the course of the conduct of its business.

(3) To file with the commissioner any report required under law or by rule or order of the commissioner.

(4) To disburse funds in accordance with its agreements and to make a good faith and reasonable effort to effect closing in a timely manner.

(5) To account or deliver to a person any personal property such as money, funds, deposit, check, draft, mortgage, other document, or thing of value, that has come into its possession and is not its property, or that it is not in law or equity entitled to retain under the circumstances, at the time that has been agreed upon or is required by law, or, in the absence of a fixed time, upon demand of the person entitled to the accounting or delivery.

(6) To file with the commissioner an amendment to its application prior to any material change in the information contained in the application for licensure, including, without limitation, the plan of operation. The commissioner shall, within 20 business days of receiving a completed amendment to the application, or within a longer time if agreed to by the licensee, issue an order approving or disapproving the effectiveness of the proposed amendment.

(7) To comply with the provisions of this division, and with any order or rule of the commissioner.

(8) To submit to periodic examination by the commissioner as required by this division.

(9) To advise the commissioner by amendment to its application of any material judgment filed against, or bankruptcy petition filed by, the licensee within five days of the filing.

(10) To notify the commissioner, in writing, by certified mail, return receipt requested, prior to opening a branch office in this state or changing the business location or locations of the applicant or the branch offices of the applicant from which activities subject to this division are conducted.

(b) The exhibit also shall contain a space for the applicant to attest that the applicant:

(1) Has complied with all applicable state and federal tax return filing requirements for the past three years or has filed with the commissioner an accountant's or attorney's statement as to why no return was filed.

(2) Has not committed a crime against the laws of any state or the United States, involving moral turpitude, misrepresentation, fraudulent or dishonest dealing, or fraud, and has disclosed to the commissioner any final judgment entered against it in a civil action upon grounds or allegations of fraud, misrepresentation, or deceit.

(3) Has not engaged in conduct that would be cause for denial of a license.

(4) Is not insolvent.

(5) Has acted with due care and competence in performing any act for which it is required to hold a license under this division.

(6) Any other matter as required by rule of the commissioner.

SEC. 2. Section 50126 of the Financial Code is amended to read:

50126. (a) Upon reasonable notice and opportunity to be heard, the commissioner may deny an application for any of the following reasons:

(1) A false statement of a material fact has been made in the application.

(2) Any officer, director, general partner, or person owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities of the applicant has, within the last 10 years, (A) been convicted of, or pleaded nolo contendere to, a crime or (B) committed any act involving dishonesty, fraud, or deceit, if the crime or act is substantially related to the qualifications, functions, or duties of a person engaged in business in accordance with this division.

(3) The applicant or any officer, director, general partner, or person owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities of the applicant, has violated any provision of this division or the rules thereunder or any similar regulatory scheme of the State of California or a foreign jurisdiction.

(b) The application shall be considered withdrawn within the meaning of this section if the applicant fails to respond to a written

notification of a deficiency in the application within 90 days of the date of the notification.

(c) The commissioner shall, within 60 days from the filing of a full and complete application for a license, including the receipt of background and investigative reports from the Department of Justice or other government agencies, and the payment of the fees required by Section 50121, issue either a license or a statement of issues prepared in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 3. Section 50306 of the Financial Code is amended to read:

50306. The commissioner may order a licensee that opens a branch office in this state or changes its business location or its locations from which activities subject to this law are conducted, without first notifying the commissioner in writing, as required by Section 50124, to forfeit to the people of the state up to one hundred dollars ($100) each day for the first 10 days and ten dollars ($10) for each day thereafter during which the branch office or changed location is maintained without notifying the commissioner.

SEC. 4. Section 50316 of the Financial Code is amended to read:

50316. (a) For any licensee, a disciplinary action taken by the State of California, another state, any agency of the federal government, or another country for any action substantially related to the activity regulated under this law may be a ground for disciplinary action by the commissioner. A certified copy of the record of the disciplinary action taken against a licensee by the State of California, another state, any agency of the federal government, or another country shall be conclusive evidence of the events related therein.

(b) Nothing in this section shall preclude the commissioner from applying a specific statutory provision in this division providing for discipline against a licensee as a result of disciplinary action taken against a licensee by the State of California, another state, an agency of the federal government, or another country.

SEC. 5. Section 50700 of the Financial Code is amended to read:

50700. (a) No residential mortgage lender, or any person or employee acting under the authority of a residential mortgage lender's license, may provide brokerage services to a borrower, except as provided in subdivision (c).

(b) "Brokerage services" means either of the following:

(1) Obtaining or attempting to obtain, on behalf of a borrower, a residential mortgage loan, as defined in subdivision (n) of Section 50003, secured by residential real estate, as defined in subdivision (s) of Section 50003, made with the funds of another institutional lender, as defined in paragraphs (1), (2), and (4) of subdivision (j) of Section 50003, and closed in the name of that lender, for a fee paid by the borrower or the institutional lender.

(2) Obtaining or attempting to obtain, on behalf of a borrower, a residential mortgage loan, as defined in subdivision (n) of Section 50003, secured by residential real estate, as defined in subdivision (s) of Section 50003, made with the funds of another institutional lender, as defined in paragraphs (1), (2), and (4) of subdivison (j) of Section 50003, but closed in the name of the licensee, for a fee paid by the borrower or the institutional lender.

(c) A residential mortgage lender may provide brokerage services under the authority of its license, if the lender first enters into a written brokerage agreement with the borrower that satisfies the requirements of Section 50701.

(d) This chapter does not authorize a licensee to do any of the following:

(1) Provide brokerage services through independent contractors.

(2) Obtain or attempt to obtain for a borrower a residential mortgage loan that is a "high cost mortgage," referred to in Section 152(aa)(1) of the Home Ownership and Equity Protection Act of 1994, as amended (15 U.S.C. Sec. 1602 (aa)).

(3) Hold itself out to borrowers, through advertising by any means, as a mortgage broker, rather than a residential mortgage lender. However, a licensee shall disclose its status as a broker or agent when that disclosure is required by law.

(4) Perform activity subject to Section 10131 of the Business and Professions Code, except activities authorized by this division.

CHAPTER 179

An act to amend Section 1569.193 of the Health and Safety Code, relating to residential care facilities for the elderly.

[Approved by Governor July 18, 1998. Filed with Secretary of State July 20, 1998.]

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

SECTION 1. Section 1569.193 of the Health and Safety Code is amended to read:

1569.193. (a) When a licensee dies, an adult relative, or other nonrelated adult, who has control of the property may be designated as the responsible party to continue operation of the facility if the following conditions are met:

(1) The licensee has filed a notarized written statement with the department designating the responsible party in the event of death, and the licensee has submitted the following information to the department:

(A) A notarized statement, signed by the designee acknowledging acceptance of designation as responsible party.

(B) A declaration signed by the designee under penalty of perjury regarding any prior criminal convictions.

(2) The designee files an application for licensure pursuant to Section 1569.15 within 20 working days of the date of death, shows evidence satisfactory to the department that he or she has the ability to operate the facility, and provides evidence of the licensee's death.

(b) A designee under this section shall notify the department of the licensee's death by the close of business on the department's next business day following the licensee's death.

(c) (1) If the designee decides not to apply for licensure, he or she shall notify the department of that decision within five working days of the licensee's death. If the designee decides not to apply, the department shall assist the designee in the development and implementation of a relocation plan.

(2) If the designee decides to apply for licensure, the department shall decide within 60 days after the application is submitted whether to issue a provisional license pursuant to Section 1569.21. A provisional license shall be granted only if the department is satisfied that the conditions specified in subdivision (a) have been met and that the health and safety of the residents of the facility will not be jeopardized.

(d) If the designee complies with this section, he or she shall not be considered to be operating an unlicensed facility while the department decides whether to grant the provisional license.

CHAPTER 180

An act to amend Section 1363 of, and to add Section 1373.96 to, the Health and Safety Code, and to add Section 10133.56 to the Insurance Code, relating to health coverage.

[Approved by Governor July 18, 1998. Filed with Secretary of State July 20, 1998.]

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

SECTION 1. Section 1363 of the Health and Safety Code is amended to read:

1363. (a) The commissioner shall require the use by each plan of disclosure forms or materials containing information regarding the benefits, services, and terms of the plan contract as the commissioner may require, so as to afford the public, subscribers, and enrollees with a full and fair disclosure of the provisions of the plan in readily understood language and in a clearly organized manner. The commissioner may require that the materials be presented in a reasonably uniform manner so as to facilitate comparisons between plan contracts of the same or other types of plans. Nothing contained

in this chapter shall preclude the commissioner from permitting the disclosure form to be included with the evidence of coverage or plan contract.

The disclosure form shall provide for at least the following information, in concise and specific terms, relative to the plan, together with additional information as may be required by the commissioner, in connection with the plan or plan contract:

(1) The principal benefits and coverage of the plan, including coverage for acute care and subacute care.

(2) The exceptions, reductions, and limitations that apply to the plan.

(3) The full premium cost of the plan.

(4) Any copayment, coinsurance, or deductible requirements that may be incurred by the member or the member's family in obtaining coverage under the plan.

(5) The terms under which the plan may be renewed by the plan member, including any reservation by the plan of any right to change premiums.

(6) A statement that the disclosure form is a summary only, and that the plan contract itself should be consulted to determine governing contractual provisions.

(7) A statement as to when benefits shall cease in the event of nonpayment of the prepaid or periodic charge and the effect of nonpayment upon an enrollee who is hospitalized or undergoing treatment for an ongoing condition.

(8) To the extent that the plan permits a free choice of provider to its subscribers and enrollees, the statement shall disclose the nature and extent of choice permitted and the financial liability which is, or may be, incurred by the subscriber, enrollee, or a third party by reason of the exercise of that choice.

(9) A summary of the provisions required by subdivision (g) of Section 1373, if applicable.

(10) If the plan utilizes arbitration to settle disputes, a statement of that fact.

(11) A summary of, and a notice of the availability of, the process the plan uses to authorize or deny health care services under the benefits provided by the plan, pursuant to Section 1363.5.

(12) A description of any limitations on the patient's choice of primary care or specialty care physician based on service area and limitations on the patient's choice of acute care hospital care, subacute or transitional inpatient care, or skilled nursing facility.

(13) General authorization requirements for referral by a primary care physician to a specialty care physician.

(14) Conditions and procedures for disenrollment.

(15) A description as to how an enrollee may request continuity of care as required by Section 1373.96.

(b) All plans, solicitors, and representatives of a plan shall, when presenting any plan contract for examination or sale to an individual

prospective plan member, provide the individual with a properly completed disclosure form, as prescribed by the commissioner pursuant to this section for each plan so examined or sold.

(c) In the case of group contracts, the completed disclosure form and evidence of coverage shall be presented to the contractholder upon delivery of the completed health care service plan agreement.

(d) Group contractholders shall disseminate copies of the completed disclosure form to all persons eligible to be a subscriber under the group contract at the time those persons are offered the plan. Where the individual group members are offered a choice of plans, separate disclosure forms shall be supplied for each plan available. Each group contractholder shall also disseminate or cause to be disseminated copies of the evidence of coverage to all subscribers enrolled under the group contract.

(e) In the case of conflicts between the group contract and the evidence of coverage, the provisions of the evidence of coverage shall be binding upon the plan notwithstanding any provisions in the group contract which may be less favorable to subscribers or enrollees.

(f) In addition to the other disclosures required by this section, every health care service plan and any agent or employee of the plan shall, when presenting a plan for examination or sale to any individual purchaser or the representative of a group consisting of 25 or fewer individuals, disclose in writing the ratio of premium costs to health services paid for plan contracts with individuals and with groups of the same or similar size for the plan's preceding fiscal year. A plan may report that information by geographic area, provided the plan identifies the geographic area and reports information applicable to that geographic area.

SEC. 2. Section 1363 of the Health and Safety Code is amended to read:

1363. (a) The commissioner shall require the use by each plan of disclosure forms or materials containing information regarding the benefits, services, and terms of the plan contract as the commissioner may require, so as to afford the public, subscribers, and enrollees with a full and fair disclosure of the provisions of the plan in readily understood language and in a clearly organized manner. The commissioner may require that the materials be presented in a reasonably uniform manner so as to facilitate comparisons between plan contracts of the same or other types of plans. Nothing contained in this chapter shall preclude the commissioner from permitting the disclosure form to be included with the evidence of coverage or plan contract.

The disclosure form shall provide for at least the following information, in concise and specific terms, relative to the plan, together with additional information as may be required by the commissioner, in connection with the plan or plan contract:

(1) The principal benefits and coverage of the plan, including coverage for acute care and subacute care.

(2) The exceptions, reductions, and limitations that apply to the plan.

(3) The full premium cost of the plan.

(4) Any copayment, coinsurance, or deductible requirements that may be incurred by the member or the member's family in obtaining coverage under the plan.

(5) The terms under which the plan may be renewed by the plan member, including any reservation by the plan of any right to change premiums.

(6) A statement that the disclosure form is a summary only, and that the plan contract itself should be consulted to determine governing contractual provisions. On the first page of the disclosure form, a notice that conforms with all of the following conditions:

(A) States that the evidence of coverage discloses the terms and conditions of coverage and that the applicant has a right to view the evidence of coverage prior to enrollment. If the evidence of coverage is not combined with the disclosure form, the notice shall specify where the evidence of coverage can be obtained prior to enrollment.

(B) Includes a statement that the disclosure and the evidence of coverage should be read completely and carefully and that individuals with special health care needs should read carefully those sections that apply to them.

(C) Includes the plan's telephone number or numbers that may be used by an applicant to receive additional information about the benefits of the plan or a statement where the telephone number or numbers are located in the disclosure form.

(D) For individual contracts, and small group plan contracts as defined in Article 3.1 (commencing with Section 1357), the disclosure form shall state where the health plan benefits and coverage matrix is located.

(E) Is printed in type no smaller than that used for the remainder of the disclosure form and is displayed prominently on the page.

(7) A statement as to when benefits shall cease in the event of nonpayment of the prepaid or periodic charge and the effect of nonpayment upon an enrollee who is hospitalized or undergoing treatment for an ongoing condition.

(8) To the extent that the plan permits a free choice of provider to its subscribers and enrollees, the statement shall disclose the nature and extent of choice permitted and the financial liability which is, or may be, incurred by the subscriber, enrollee, or a third party by reason of the exercise of that choice.

(9) A summary of the provisions required by subdivision (g) of Section 1373, if applicable.

(10) If the plan utilizes arbitration to settle disputes, a statement of that fact.

(11) A summary of, and a notice of the availability of, the process the plan uses to authorize or deny health care services under the benefits provided by the plan, pursuant to Section 1363.5.

(12) A description of any limitations on the patient's choice of primary care or specialty care physician based on service area and limitations on the patient's choice of acute care hospital care, subacute or transitional inpatient care, or skilled nursing facility.

(13) General authorization requirements for referral by a primary care physician to a specialty care physician.

(14) Conditions and procedures for disenrollment.

(15) A description as to how an enrollee may request continuity of care as required by Section 1373.96.

(b) (1) As of July 1, 1999, the commissioner shall require each plan offering a contract to an individual or small group to provide with the disclosure form for individual and small group plan contracts a uniform health plan benefits and coverage matrix containing the plan's major provisions in order to facilitate comparisons between plan contracts. The uniform matrix shall include the following category descriptions together with the corresponding copayments and limitations in the following sequence:

(A) Deductibles.
(B) Lifetime maximums.
(C) Professional services.
(D) Outpatient services.
(E) Hospitalization services.
(F) Emergency health coverage.
(G) Ambulance services.
(H) Prescription drug coverage.
(I) Durable medical equipment.
(J) Mental health services.
(K) Chemical dependency services.
(L) Home health services.
(M) Other.

(2) The following statement shall be placed at the top of the matrix in all capital letters in at least 10-point boldface type:

THIS MATRIX IS INTENDED TO BE USED TO HELP YOU COMPARE COVERAGE BENEFITS AND IS A SUMMARY ONLY. THE EVIDENCE OF COVERAGE AND PLAN CONTRACT SHOULD BE CONSULTED FOR A DETAILED DESCRIPTION OF COVERAGE BENEFITS AND LIMITATIONS.

(c) Nothing in this section shall prevent a plan from using appropriate footnotes or disclaimers to reasonably and fairly describe coverage arrangements in order to clarify any part of the matrix that may be unclear.

(d) All plans, solicitors, and representatives of a plan shall, when presenting any plan contract for examination or sale to an individual

prospective plan member, provide the individual with a properly completed disclosure form, as prescribed by the commissioner pursuant to this section for each plan so examined or sold.

(e) In the case of group contracts, the completed disclosure form and evidence of coverage shall be presented to the contractholder upon delivery of the completed health care service plan agreement.

(f) Group contractholders shall disseminate copies of the completed disclosure form to all persons eligible to be a subscriber under the group contract at the time those persons are offered the plan. Where the individual group members are offered a choice of plans, separate disclosure forms shall be supplied for each plan available. Each group contractholder shall also disseminate or cause to be disseminated copies of the evidence of coverage to all subscribers enrolled under the group contract.

(g) In the case of conflicts between the group contract and the evidence of coverage, the provisions of the evidence of coverage shall be binding upon the plan notwithstanding any provisions in the group contract which may be less favorable to subscribers or enrollees.

(h) In addition to the other disclosures required by this section, every health care service plan and any agent or employee of the plan shall, when presenting a plan for examination or sale to any individual purchaser or the representative of a group consisting of 25 or fewer individuals, disclose in writing the ratio of premium costs to health services paid for plan contracts with individuals and with groups of the same or similar size for the plan's preceding fiscal year. A plan may report that information by geographic area, provided the plan identifies the geographic area and reports information applicable to that geographic area.

(i) Subdivision (b) shall not apply to any coverage provided by a plan for the Medi-Cal program or the Medicare program pursuant to Title XVIII and Title XIX of the Social Security Act.

SEC. 3. Section 1373.96 is added to the Health and Safety Code, immediately following Section 1373.95, to read:

1373.96. (a) Every health care service plan shall, at the request of an enrollee, arrange for the continuation of covered services rendered by a terminated provider to an enrollee who is undergoing a course of treatment from a terminated provider for an acute condition, serious chronic condition, or a pregnancy covered by subdivision (b), at the time of the contract termination, subject to the provisions of this section.

(b) Subject to subdivisions (c) and (d), the plan shall, at the request of an enrollee, provide for continuity of care for the enrollee by a terminated provider who has been providing care for an acute condition or a serious chronic condition, for a high-risk pregnancy, or for a pregnancy that has reached the second or third trimester. In cases involving an acute condition or a serious chronic condition, the plan shall furnish the enrollee with health care services on a timely

and appropriate basis from the terminated provider for up to 90 days or a longer period if necessary for a safe transfer to another provider as determined by the plan in consultation with the terminated provider, consistent with good professional practice. In the case of a pregnancy, the plan shall furnish the enrollee with health care services on a timely and appropriate basis from the terminated provider until postpartum services related to the delivery are completed or for a longer period if necessary for a safe transfer to another provider as determined by the plan in consultation with the terminated provider, consistent with good professional practice.

(c) The plan may require the terminated provider whose services are continued beyond the contract termination date pursuant to this section to agree in writing to be subject to the same contractual terms and conditions that were imposed upon the provider prior to termination, including, but not limited to, credentialing, hospital privileging, utilization review, peer review, and quality assurance requirements. If the terminated provider does not agree to comply or does not comply with these contractual terms and conditions, there shall be no obligation on the part of the plan to continue the provider's services beyond the contract termination date. Further, if the terminated provider or provider group voluntarily leaves the plan, there shall be no obligation on the part of the provider or the plan to continue the provider's services beyond the contract termination date.

(d) Unless otherwise agreed upon between the terminated provider and the plan or between the provider and the provider group, the agreement shall be construed to require a rate and method of payment to the terminated provider, for the services rendered pursuant to this section, similar to rates and methods of payment used by the plan or the provider group for currently contracting providers providing similar services who are not capitated and who are practicing in the same or a similar geographic area as the terminated provider. The plan or the provider group shall not be obligated to continue the services of a terminated provider if the provider does not accept the payment rates provided for in this section.

(e) A description as to how an enrollee may request continuity of care pursuant to this section shall be provided in any plan evidence of coverage and disclosure form issued after July 1, 1999. A plan shall provide a written copy of this information to its contracting providers and provider groups. A plan shall also provide a copy to its enrollees upon request.

(f) The payment of copayments, deductibles, or other cost sharing components by the enrollee during the period of continuation of care with a terminated provider shall be the same copayments, deductibles, or other cost sharing components that would be paid by the enrollee when receiving care from a provider currently contracting with or employed by the plan.

(g) If a plan delegates the responsibility of complying with this section to its contracting providers or contracting provider groups, the plan shall ensure that the requirements of this section are met.

(h) For the purposes of this section:

(1) "Provider" means a person who is a licentiate, as defined in Section 805 of the Business and Professions Code or a person licensed under Chapter 2 (commencing with Section 1000) of Division 2 of the Business and Professions Code.

(2) "Terminated provider" means a provider whose contract to provide services to plan enrollees is terminated or not renewed by the plan or one of the plan's contracting provider groups. A terminated provider is not a provider who voluntarily leaves the plan or contracting provider group.

(3) "Provider group" includes a medical group, independent practice association, or any other similar group of providers.

(4) "Acute condition" means a medical condition that involves a sudden onset of symptoms due to an illness, injury, or other medical problem that requires prompt medical attention and that has a limited duration.

(5) "Serious chronic condition" means a medical condition due to a disease, illness, or other medical problem or medical disorder that is serious in nature, and that does either of the following:

(A) Persists without full cure or worsens over an extended period of time.

(B) Requires ongoing treatment to maintain remission or prevent deterioration.

(i) This section shall not require a plan or provider group to provide for continuity of care by a provider whose contract with the plan or group has been terminated or not renewed for reasons relating to a medical disciplinary cause or reason, as defined in paragraph (6) of subdivision (a) of Section 805 of the Business and Profession Code, or fraud or other criminal activity.

(j) This section shall not require a plan to cover services or provide benefits that are not otherwise covered under the terms and conditions of the plan contract.

(k) The provisions contained in this section are in addition to any other responsibilities of health care service plans to provide continuity of care pursuant to this chapter. Nothing in this section shall preclude a plan from providing continuity of care beyond the requirements of this section.

SEC. 4. Section 10133.56 is added to the Insurance Code, to read:

10133.56. (a) Disability insurers who provide hospital, medical, or surgical coverage and that negotiate and enter into contracts with professional or institutional providers to provide services at alternative rates of payment pursuant to Section 10133, shall, at the request of an insured, arrange for the continuation of covered services rendered by a terminated provider to an insured who is undergoing a course of treatment from a terminated provider for an

acute condition, serious chronic condition, or a pregnancy covered by subdivision (b), at the time of the contract termination, subject to the provisions of this section.

(b) Subject to subdivisions (c) and (d), the insurer shall, at the request of an insured, provide for continuity of care for the insured by a terminated provider who has been providing care for an acute condition or a serious chronic condition, for a high-risk pregnancy, or for a pregnancy that has reached the second or third trimester. Continuity of care for an acute or serious chronic condition shall be provided for up to 90 days or a longer period if necessary to ensure a safe transfer to another provider, as determined by the insurer, in consultation with the terminated provider, consistent with good professional practice. In the case of pregnancy, continuity of care shall be provided through the course of the pregnancy and during the postpartum period. After the required period of continuity of care has expired pursuant to this section, coverage shall be provided pursuant to the general terms and conditions of the insured's policy.

(c) The insurer may require the terminated provider whose services are continued beyond the contract termination date pursuant to this section to agree in writing to be subject to the same contractual terms and conditions that were imposed upon the provider prior to termination, including, but not limited to, credentialing, hospital privileging, utilization review, peer review, and quality assurance requirements. If the terminated provider does not agree to comply or does not comply with these contractual terms and conditions, there shall be no obligation on the part of the insurer to continue the provider's services beyond the contract termination date. Further, if the terminated provider or provider group voluntarily cancels the contract with the insurer, there shall be no obligation on the part of the provider or the insurer to continue the provider's services beyond the contract termination date.

(d) Unless otherwise agreed upon between the terminated provider and the insurer or between the terminated provider and the provider group, the agreement shall be construed to require a rate and method of payment to the terminated provider, for the services rendered pursuant to this section, that is the same as the rates and method of payment for the same services while under contract with the insurer and at the time of termination. The provider shall accept the reimbursement as payment in full, and shall not bill the insured for any amount in excess of the reimbursement rate, with the exception of copayments and deductibles pursuant to subdivision (f). The insurer or provider group shall not be obligated to continue the services of a terminated provider if the provider does not accept the payment rates provided for in this section.

(e) Notice as to how an insured may request continuity of care pursuant to this section shall be provided in any insurer evidence of coverage and disclosure form issued after July 1, 1999. An insurer shall provide a written copy of this information to its contracting providers

and provider groups. An insurer shall also provide a copy to its insureds upon request.

(f) The payment of copayments, deductibles, or other cost sharing components by the insured during the period of continuation of care with a terminated provider shall be the same copayments, deductibles, or other cost sharing components that would be paid by the insured when receiving care from a provider currently contracting with the insurer.

(g) If an insurer delegates the responsibility of complying with this section to its contracting entities, the insurer shall ensure that the requirements of this section are met.

(h) For the purposes of this section:

(1) "Provider" means a person who is a licentiate as defined in Section 805 of the Business and Professions Code or a person licensed under Chapter 2 (commencing with Section 1000) of Division 2 of the Business and Professions Code.

(2) "Terminated provider" means a provider whose contract to provide services to insureds is terminated or not renewed by the insurer or one of the insurer's contracting provider groups. A terminated provider is not a provider who voluntarily leaves the insurer or contracting provider group.

(3) "Provider group" includes a medical group, independent practice association, or any other similar group of providers.

(4) "Acute condition" means a medical condition that involves a sudden onset of symptoms due to an illness, injury, or other medical problem that requires prompt medical attention, and has a limited duration.

(5) "Serious chronic condition" means a medical condition due to a disease, illness, or other medical problem or medical disorder that is serious in nature, and that does either of the following:

(A) Persists without full cure or worsens over an extended period of time.

(B) Requires ongoing treatment to maintain remission or prevent deterioration.

(i) This section shall not require an insurer or provider group to provide for continuity of care by a provider whose contract with the insurer or group has been terminated or not renewed for reasons relating to medical disciplinary cause or reason, as defined in paragraph (6) of subdivision (a) of Section 805 of the Business and Professions Code, or fraud or other criminal activity.

(j) This section shall not require an insurer to cover services or provide benefits that are not otherwise covered under the terms and conditions of the insurer contract.

(k) The provisions contained in this section are in addition to any other responsibilities of insurers to provide continuity of care pursuant to this chapter. Nothing in this section shall preclude an insurer from providing continuity of care beyond the requirements of this section.

SEC. 5. Section 2 of this bill incorporates amendments to Section 1363 of the Health and Safety Code proposed by both this bill and AB 607. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 1363 of the Health and Safety Code, and (3) this bill is enacted after AB 607, in which case Section 1 of this bill shall not become operative.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 181

An act to amend Sections 19620, 19620.1, and 19622.3 of the Business and Professions Code, relating to fairs.

[Approved by Governor July 18, 1998. Filed with Secretary of State July 20, 1998.]

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

SECTION 1. Section 19620 of the Business and Professions Code is amended to read:

19620. (a) The Legislature finds and declares that the Department of Food and Agriculture is responsible for ensuring the integrity of the Fair and Exposition Fund, administering allocations from the fund to the network of California fairs, as defined in Sections 19418 to 19418.3, inclusive, and providing oversight of activities carried out by each California fair.

(b) Oversight shall include, but not be limited to, the following:

(1) Monitoring the solvency of the Fair and Exposition Fund.

(2) Distributing available state resources to the network of California fairs based on criteria for state allocations approved by the Secretary of Food and Agriculture. The criteria for the distribution of available state resources to the network of California fairs shall not include a consideration of the structure that governs the fair.

(3) Creating a framework for administration of the network of California fairs allowing for maximum autonomy and local

decisionmaking authority, and conducting, or causing to be conducted, annual fiscal audits and periodic compliance audits.

(4) Conducting fiscal and performance audits of county fairs and citrus fruit fairs that are requested by the fair that is the subject of the audit, and that the Department of Food and Agriculture deems to be necessary.

(5) Guiding and providing incentives to fairs to seek matching funds and generate new revenue from a variety of sources.

(6) Supporting continuous improvement of fair programming to ensure that California fairs remain highly relevant community institutions.

SEC. 2. Section 19620.1 of the Business and Professions Code is amended to read:

19620.1. (a) From the total revenue received by the board, exclusive of money received pursuant to Sections 19640 and 19641, the sum of two hundred sixty-five thousand dollars ($265,000) plus an amount equal to $^{63}/_{100}$ of 1 percent of the gross amount of money handled in the annual parimutuel pool generated within this state, or the maximum amount received by the state from the parimutuel pool of a racing meeting held in this state, whichever is less, shall be paid into the State Treasury to the credit of the Fair and Exposition Fund. If the revenues paid into the Fair and Exposition Fund under this section are in excess of thirteen million dollars ($13,000,000) in any fiscal year, one-half of the amount in excess of the thirteen million dollars ($13,000,000) shall be transferred to the General Fund.

(b) From the total revenue received by the board, exclusive of money received pursuant to Sections 19640 and 19641, and in addition to the funds paid into the State Treasury to the credit of the Fair and Exposition Fund as specified in subdivision (a), the Legislature shall annually appropriate and the board shall deposit to the credit of the Fair and Exposition Fund, such sums as it deems necessary for the following purposes:

(1) For the support of the board, including any costs and expenses incurred by the Attorney General in the enforcement of this chapter as shall be authorized by the board, including, compensation including any fringe benefits paid to stewards and to the official veterinarian, and an amount not less than the amount expended in the 1994–95 fiscal year for the costs of laboratory testing related to horseracing pursuant to Section 19580.

(2) To the Department of Food and Agriculture for the oversight of the network of California fairs receiving money from the fund.

(3) To the Department of Food and Agriculture for the contributions, or the cost of benefits in lieu of contributions, payable to the Unemployment Fund by the network of California fairs receiving funds pursuant to this article, as a result of unemployment insurance coverage pursuant to Section 605 of the Unemployment Insurance Code.

(4) To the Department of Food and Agriculture for the auditing of all district agricultural association fairs, county fairs, and citrus fruit fairs.

SEC. 3. Section 19622.3 of the Business and Professions Code is amended to read:

19622.3. (a) The authority of the Department of Food and Agriculture shall include, but is not limited to, requiring district agricultural associations to meet all applicable standards prescribed by the Department of Food and Agriculture.

(b) The department may delegate approval authority for such matters as the department may determine to the board of directors if the board complies with this section. The department shall report annually to the Joint Committee on Fairs Allocation and Classification the names of fairs that are delegated that authority.

(c) Notwithstanding any other provision of law, and in order to protect the integrity of the Fair and Exposition Fund, the department may assume all rights, duties, and powers of the board of directors of a district agricultural association if the department reasonably determines that there is insufficient fiscal or administrative control. The board of directors shall again exercise these rights, duties, and powers when the department determines that the fair is in compliance with this section. The department shall report annually to the Joint Committee on Fairs Allocation and Classification the names of fairs with respect to which the department has taken the action prescribed in this subdivision and subdivision (d).

(d) The department may petition a court of competent jurisdiction for an order appointing the department, or a person designated by the department, as a receiver if it determines that the fair is insolvent, or is in imminent danger of insolvency. The court shall appoint a receiver upon a showing that the fair is insolvent, or is in imminent danger of insolvency.

(e) For the purposes of this section, "insolvency" means that the district agricultural association is unable to discharge its debts as they become due in the usual course of business.

CHAPTER 182

An act to amend Section 836 of the Penal Code, relating to criminal procedure.

[Approved by Governor July 18, 1998. Filed with Secretary of State July 20, 1998.]

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 domestic violence protective or restraining order issued under the Family Code, Section 527.6 of the Code of Civil Procedure, Section 213.5 of the Welfare and Institutions Code, Section 136.2 of this code, or paragraph (2) of subdivision (a) of Section 1203.097 of this code, or of a domestic violence protective or restraining order issued by the court of another state, tribe, or territory 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 or the Domestic Violence Protection Order Registry maintained pursuant to Section 6380 of the Family Code that a true copy of the protective order has been registered, 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 Division 10 (commencing with Section 6200) 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.

(d) Notwithstanding paragraph (1) of subdivision (a), if a suspect commits an assault or battery upon a current or former spouse, a current or former cohabitant as defined in Section 6209 of the Family Code, a person with whom the suspect is having or has had an engagement relationship, a person with whom the suspect has parented a child, or is presumed to have parented a child pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code), a child of the suspect, a child whose parentage by the suspect is the subject of an action under the Uniform Parentage Act, a child of a person in one of the above categories, or any other person related to the suspect by consanguinity or affinity within the second degree, a peace officer may arrest the suspect without a warrant where both of the following circumstances apply:

(1) The peace officer has reasonable cause to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

(2) The peace officer makes the arrest as soon as reasonable cause arises to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

SEC. 1.1. 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 domestic violence protective or restraining order issued under the Family Code, Section 527.6 of the Code of Civil Procedure, Section 213.5 of the Welfare and Institutions Code, Section 136.2 of this code, or paragraph (2) of subdivision (a) of Section 1203.097 of

this code, or of a domestic violence protective or restraining order issued by the court of another state, tribe, or territory 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 or the Domestic Violence Protection Order Registry maintained pursuant to Section 6380 of the Family Code that a true copy of the protective order has been registered, 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 Division 10 (commencing with Section 6200) 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.

(d) Notwithstanding paragraph (1) of subdivision (a), if a suspect commits an assault or battery upon a current or former spouse, a current or former cohabitant as defined in Section 6209 of the Family Code, a person with whom the suspect is having or has had an engagement relationship, a person with whom the suspect has parented a child, or is presumed to have parented a child pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code), a child of the suspect, a child whose parentage by the suspect is the subject of an action under the Uniform Parentage Act, a child of a person in one of the above categories, or any other person related to the suspect by consanguinity or affinity within the second degree, a peace officer may arrest the suspect without a warrant where both of the following circumstances apply:

(1) The peace officer has reasonable cause to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

(2) The peace officer makes the arrest as soon as reasonable cause arises to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

(e) In addition to the authority to make an arrest without a warrant pursuant to paragraphs (1) and (3) of subdivision (a), a peace officer may, without a warrant, arrest a person for a violation of Section 12025 when all of the following apply:

(1) The officer has reasonable cause to believe that the person to be arrested has committed the violation of Section 12025.

(2) The violation of Section 12025 occurred within an airport, as defined in Section 21013 of the Public Utilities Code, in an area to which access is controlled by the inspection of persons and property.

(3) The peace officer makes the arrest as soon as reasonable cause arises to believe that the person to be arrested has committed the violation of Section 12025.

SEC. 1.2. 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 probable 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 probable 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 domestic violence protective or restraining order issued under the Family Code, Section 527.6 of the Code of Civil Procedure, Section 213.5 of the Welfare and Institutions Code, Section 136.2 of this code, or paragraph (2) of subdivision (a) of Section 1203.097 of this code, or of a domestic violence protective or restraining order issued by the court of another state, tribe, or territory and the peace officer has probable 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 or the Domestic Violence Protection Order Registry maintained pursuant to Section 6380 of the Family Code that a true copy of the protective order has been registered, 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 Division 10 (commencing with Section 6200) 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.

(d) Notwithstanding paragraph (1) of subdivision (a), if a suspect commits an assault or battery upon a current or former spouse, fiancé, fiancée, a current or former cohabitant as defined in Section 6209 of the Family Code, a person with whom the suspect currently is having or has previously had an engagement relationship, a person with whom the suspect has parented a child, or is presumed to have parented a child pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code), a child of the suspect, a child whose parentage by the suspect is the subject of an action under the Uniform Parentage Act, a child of a person in one of the above categories, or any other person related to the suspect by consanguinity or affinity within the second degree, a peace officer may arrest the suspect without a warrant where both of the following circumstances apply:

(1) The peace officer has probable cause to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

(2) The peace officer makes the arrest as soon as probable cause arises to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

SEC. 1.3. 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 probable 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 probable 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 domestic violence protective or restraining order issued under the Family Code, Section 527.6 of the Code of Civil Procedure, Section 213.5 of the Welfare and Institutions Code, Section 136.2 of this code, or paragraph (2) of subdivision (a) of Section 1203.097 of this code, or of a domestic violence protective or restraining order issued by the court of another state, tribe, or territory and the peace officer has probable 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 or the Domestic Violence Protection Order Registry maintained pursuant to Section 6380 of the Family Code that a true copy of the protective order has been registered, 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 Division 10 (commencing with Section 6200) 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.

(d) Notwithstanding paragraph (1) of subdivision (a), if a suspect commits an assault or battery upon a current or former spouse, fiancé, fiancée, a current or former cohabitant as defined in Section 6209 of the Family Code, a person with whom the suspect currently is having or has previously had an engagement relationship, a person with whom the suspect has parented a child, or is presumed to have parented a child pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code), a child of the suspect, a child whose parentage by the suspect is the subject of an action under the Uniform Parentage Act, a child of a person in one of the above categories, or any other person related to the suspect by consanguinity or affinity within the second degree, a peace officer may arrest the suspect without a warrant where both of the following circumstances apply:

(1) The peace officer has probable cause to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

(2) The peace officer makes the arrest as soon as probable cause arises to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

(e) In addition to the authority to make an arrest without a warrant pursuant to paragraphs (1) and (3) of subdivision (a), a peace officer may, without a warrant, arrest a person for a violation of Section 12025 when all of the following apply:

(1) The officer has reasonable cause to believe that the person to be arrested has committed the violation of Section 12025.

(2) The violation of Section 12025 occurred within an airport, as defined in Section 21013 of the Public Utilities Code, in an area to which access is controlled by the inspection of persons and property.

(3) The peace officer makes the arrest as soon as reasonable cause arises to believe that the person to be arrested has committed the violation of Section 12025.

SEC. 2. (a) Section 1.1 of this bill incorporates amendments to Section 836 of the Penal Code proposed by both this bill and AB 247. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 836 of the Penal Code, and (3) AB 1767 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 247, in which case Sections 1, 1.2, and 1.3 of this bill shall not become operative.

(b) Section 1.2 of this bill incorporates amendments to Section 836 of the Penal Code proposed by both this bill and AB 1767. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 836 of the

Penal Code, (3) AB 247 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1767, in which case Sections 1, 1.1, and 1.3 of this bill shall not become operative.

(c) Section 1.3 of this bill incorporates amendments to Section 836 of the Penal Code proposed by this bill, AB 247, and AB 1767. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1999, (2) all three bills amend Section 836 of the Penal Code, and (3) this bill is enacted after AB 247 and AB 1767, in which case Sections 1, 1.1, and 1.2 of this bill shall not become operative.

CHAPTER 183

An act to amend Section 1196 of the Penal Code, relating to criminal procedure.

[Approved by Governor July 18, 1998. Filed with Secretary of State July 20, 1998.]

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

SECTION 1. Section 1196 of the Penal Code is amended to read:

1196. (a) The clerk, or the judge or justice, if there is no clerk, must at any time after the order issue a bench warrant into one or more counties.

(b) The clerk, or the judge or justice, shall require the appropriate agency to enter each bench warrant issued on a private surety-bonded felony case into the national warrant system (National Crime Information Center (NCIC)). If the appropriate agency fails to enter the bench warrant into the national warrant system (NCIC), and the court finds that this failure prevented the surety or bond agent from surrendering the fugitive into custody, prevented the fugitive from being arrested or taken into custody, or resulted in the fugitive's subsequent release from custody, the court having jurisdiction over the bail shall, upon petition, set aside the forfeiture of the bond and declare all liability on the bail bond to be exonerated.

CHAPTER 184

An act to amend Sections 10113.5 and 10206 of the Insurance Code, relating to insurance.

[Approved by Governor July 18, 1998. Filed with Secretary of State July 20, 1998.]

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

SECTION 1. Section 10113.5 of the Insurance Code is amended to read:

10113.5. (a) An individual life insurance policy delivered or issued for delivery in this state shall contain a provision that it is incontestable after it has been in force, during the lifetime of the insured, for a period of not more than two years after its date of issue, except for nonpayment of premiums and except for any of the supplemental benefits described in Section 10271, to the extent that the contestability of those benefits is otherwise set forth in the policy or contract supplemental thereto. An individual life insurance policy, upon reinstatement, may be contested on account of fraud or misrepresentation of facts material to the reinstatement only for the same period following reinstatement, and with the same conditions and exceptions, as the policy provides with respect to contestability after original issuance.

(b) (1) Notwithstanding subdivision (a), if photographic identification is presented during the application process, and if an impostor is substituted for a named insured in any part of the application process, with or without the knowledge of the named insured, then no contract between the insurer and the named insured is formed, and any purported insurance contract is void from its inception.

(2) As used in this subdivision:

(A) "Application process" means any or all of the steps required of a named insured in applying for a certificate under an individual policy of life insurance, including, but not limited to, executing any part of the application form, submitting to medical or physical examination or testing, or providing a sample or specimen of blood, urine, or other bodily substance.

(B) "Impostor" means a person other than the named insured who participates in any manner in the application process for a certificate under an individual life insurance policy and represents himself or herself to be the named insured or represents that a sample or specimen of blood, urine, or other bodily substance is that of the named insured.

(C) "Named insured" means the individual named in an application form for a certificate under an individual life insurance policy as the person whose life is to be insured.

(c) This section shall not be construed to preclude at any time the assertion of defenses based upon policy provisions that exclude or restrict coverage.

(d) This section shall not apply to individual life insurance policies delivered or issued for delivery in this state on or before December 31, 1973.

SEC. 2. Section 10206 of the Insurance Code is amended to read:

10206. (a) The policy shall provide that the validity of the policy shall not be contested, except for nonpayment of premiums, after it has been in force for two years from its date of issue; and that no statement made by any employee insured under the policy relating to his or her insurability shall be used in contesting the validity of the insurance with respect to which the statement was made after the insurance has been in force prior to the contest for a period of two years during the employee's lifetime nor unless it is contained in a written application signed by the employee.

(b) (1) Notwithstanding subdivision (a), if photographic identification is presented during the application or enrollment process, and if an impostor is substituted for a named insured in any part of the application or enrollment process, with or without the knowledge of the named insured, then no contract between the insurer and the named insured is formed, and any purported insurance contract is void from its inception.

(2) As used in this subdivision:

(A) "Application or enrollment process" means any or all of the steps required of a named insured in applying for a certificate under a group policy of life insurance, including, but not limited to, executing any part of the application or enrollment form, submitting to medical or physical examination or testing, or providing a sample or specimen of blood, urine, or other bodily substance.

(B) "Impostor" means a person other than the named insured who participates in any manner in the application or enrollment process for a certificate under a group life insurance policy and represents himself or herself to be the named insured or represents that a sample or specimen of blood, urine, or other bodily substance is that of the named insured.

(C) "Named insured" means the individual named in an application or enrollment form for a certificate under a group life insurance policy as the person whose life is to be insured.

CHAPTER 185

An act to amend Section 8043 of the Fish and Game Code, relating to commercial fishing.

[Approved by Governor July 18, 1998. Filed with Secretary of State July 20, 1998.]

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

SECTION 1. Section 8043 of the Fish and Game Code is amended to read:

8043. (a) Every commercial fisherman who sells or delivers fish that he or she has taken to any person who is not licensed under

Article 7 (commencing with Section 8030), and every person who is required to be licensed under Article 7 (commencing with Section 8030) to conduct the activities of a fish receiver, as described in Section 8033, shall make a legible landing receipt record on a form to be furnished by the department. The landing receipt shall be completed at the time of the receipt, purchase, or transfer of fish, whichever occurs first.

(b) The landing receipt shall show all of the following:

(1) The accurate weight of the species of fish received, as designated pursuant to Section 8045. Sablefish may be reported in dressed weight, and if so reported, shall have the round weights computed, for purposes of management quotas, by multiplying 1.6 times the reported dressed weight.

(2) The name of the fisherman and the fisherman's identification number.

(3) The department registration number of the boat.

(4) The recipient's name and identification number, if applicable.

(5) The date of receipt.

(6) The price paid.

(7) The department origin block number where the fish were caught.

(8) The type of gear used.

(9) Any other information the department may prescribe.

(c) The numbered landing receipt forms in each individual landing receipt book shall be completed sequentially. A voided fish landing receipt shall have the word "VOID" plainly and noticeably written on the face of the receipt. A voided fish landing receipt shall be submitted to the department in the same manner as a completed fish landing receipt is submitted to the department. A fish receiver who is no longer conducting business as a licensed receiver shall forward all unused landing receipts and landing receipt books to the department immediately upon terminating his or her business activity.

CHAPTER 186

An act to amend Section 8280.3 of the Fish and Game Code, relating to fisheries, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 18, 1998. Filed with Secretary of State July 20, 1998.]

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

SECTION 1. Section 8280.3 of the Fish and Game Code is amended to read:

8280.3. (a) Notwithstanding Article 9 (commencing with Section 8100) of Chapter 1 and except as provided in this section, a Dungeness crab vessel permit shall not be transferred.

(1) The owner of a vessel to whom a Dungeness crab vessel permit has been issued shall transfer the permit for the use of that vessel upon the sale of the vessel by the permitholder to the person purchasing the vessel. Thereafter, upon notice to the department, the person purchasing the vessel may use the vessel for the taking and landing of Dungeness crab for any and all of the unexpired portion of the permit year, and that person is eligible for a permit pursuant to Section 8280.1 for the use of that vessel in subsequent years. The person purchasing the vessel may not transfer the permit for use of that vessel in the Dungeness crab fishery to another replacement vessel during the same permit year.

(2) The owner of a vessel to whom the Dungeness crab vessel permit has been issued may transfer the permit to a replacement vessel of equivalent capacity, except as specified in this section. Thereafter, upon notice to the department and payment of the transfer fee specified in Section 8280.6, the replacement vessel may be used for the taking and landing of Dungeness crab for any and all of the unexpired portion of the permit year and that person is eligible for a permit pursuant to Section 8280.1 for the use of that replacement vessel in subsequent years.

The owner of a permitted vessel may transfer the permit to a vessel of greater capacity that was owned by that person on or before November 15, 1995, not to exceed 10 feet longer in length overall than the vessel for which the permit was originally issued or to a vessel of greater capacity purchased after November 15, 1995, not to exceed five feet longer in length overall than the vessel for which the permit was originally issued.

The department, upon recommendation of the Dungeness crab review panel, may authorize the owner of a permitted vessel to transfer the permit to a replacement vessel that was owned by that person on or before April 1, 1996, that does not fish with trawl nets that is greater than five feet longer in length overall than the vessel for which the permit was originally issued, if all of the following conditions are satisfied:

(A) A vessel of a larger size is essential to the owner for participation in another fishery other than a trawl net fishery.

(B) The owner held a permit on or before January 1, 1995, for the fishery for which a larger vessel is needed and has participated in that fishery.

(C) The permit for the vessel from which the permit is to be transferred qualified pursuant to paragraph (1) of subdivision (b) of Section 8280.1.

(D) The vessel to which the permit is to be transferred does not exceed 20 feet longer in length overall than the vessel for which the

permit was originally issued and the vessel to which the permit is to be transferred does not exceed 60 feet in overall length.

No transfer of a permit to a larger vessel shall be allowed more than one time. If a permit is transferred to a larger vessel, any Dungeness crab vessel permit for that permit year or any subsequent permit years for that larger vessel may not be transferred to another larger vessel. The department shall not thereafter issue a Dungeness crab vessel permit for the use of the original vessel from which the permit was transferred, except that the original vessel may be used to take or land Dungeness crab after that transfer if its use is authorized pursuant to another Dungeness crab vessel permit subsequently transferred to that vessel pursuant to this paragraph.

(3) Upon the written approval of the department, the owner of a vessel to whom the Dungeness crab vessel permit has been issued may temporarily transfer the permit to another replacement vessel, for which use in the Dungeness crab fishery is not permitted pursuant to this section or Section 8280.1, for a period of not more than six months during the current permit year if the vessel for which the permit was issued is seriously damaged, suffers major mechanical breakdown, or is lost or destroyed, as determined by the department, upon approval of the director. The owner of the vessel shall submit proof that the department may reasonably require to establish the existence of the conditions of this paragraph. Upon approval by the director, the owner of a lost or destroyed vessel granted a six-month temporary transfer under this section may be granted an additional six-month extension of the temporary transfer.

(4) Upon written approval of the department, the owner of a vessel to whom the Dungeness crab vessel permit has been issued may retain that permit upon the sale of that permitted vessel for the purpose of transferring the permit to another vessel to be purchased by that individual within one year of the time of sale of the vessel for which the permit was originally issued if the requirements of this section are satisfied, including the payment of transfer fees. If the permit is not transferred to a new vessel owned by the person to whom the vessel permit was originally issued within one year of the sale of the vessel for which it was originally issued, or if the person does not retain ownership of the new vessel to which the permit is transferred for a period of not less than one year, the permit shall be revoked.

(5) In the event of the death or incapacity of a permitholder, the permit shall be transferred, upon application, to the heirs or assigns, or to the working partner, of the permitholder, together with the transfer of the vessel for which the permit was issued, and the new owner may continue to operate the vessel under the permit, renew the permit, or transfer the permit upon sale of the vessel pursuant to paragraph (1).

(b) This section shall become inoperative on April 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. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or 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 an orderly crab fishery, it is necessary for this act to take effect immediately.

CHAPTER 187

An act to amend Section 6380 of the Family Code, and to amend Section 136.2 of the Penal Code, relating to domestic violence.

[Approved by Governor July 18, 1998. Filed with Secretary of State July 20, 1998.]

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

SECTION 1. Section 6380 of the Family Code is amended to read:

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel, or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the Domestic Violence Protective Order Registry, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department of Justice under subdivision (a) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based upon the proportion of the costs incurred by the local agency and those incurred by the Department of Justice, shall be transferred to the local agency actually providing the data. All data with respect to criminal court protective orders issued under subdivision (g) of Section 136.2 of the Penal Code shall be transmitted by the court or its designee within one business day to law enforcement personnel by either one of the following methods:

(1) Transmitting a physical copy of the order to a local law enforcement agency authorized by the Department of Justice to enter orders into CLETS.

(2) With the approval of the Department of Justice, entering the order into CLETS directly.

(b) Upon the issuance of a protective order to which this division applies pursuant to Section 6221, or the issuance of a temporary restraining order or injunction relating to domestic violence pursuant to Section 527.8 of the Code of Civil Procedure, or the issuance of a criminal court protective order under subdivision (g) of Section 136.2 of the Penal Code, or the issuance of a juvenile court restraining order related to domestic violence pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code, or upon registration with the court clerk of a domestic violence protective order issued by the court of another state, and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or paternity proceeding the Department of Justice shall be immediately notified of the contents of the order and the following information:

(1) The name, race, date of birth, and other personal descriptive information of the respondent as required by a form prescribed by the Department of Justice.

(2) The names of the protected persons.

(3) The date of issuance of the order.

(4) The duration or expiration date of the order.

(5) The terms and conditions of the protective order, including stay-away, no-contact, residency exclusion, custody, and visitation provisions of the order.

(6) The department or division number and the address of the court.

(7) Whether or not the order was served upon the respondent.

All available information shall be included; however, the inability to provide all categories of information shall not delay the entry of the information available.

(c) The information conveyed to the Department of Justice shall also indicate whether the respondent was present in court to be informed of the contents of the court order. The respondent's presence in court shall provide proof of service of notice of the terms of the protective order. The respondent's failure to appear shall also be included in the information provided to the Department of Justice.

(d) Immediately upon receipt of proof of service the clerk of the court, and immediately after service any law enforcement officer who served the protective order, shall notify the Department of Justice, by electronic transmission, of the service of the protective order, including the name of the person who served the order and, if that person is a law enforcement officer, the law enforcement agency.

(e) The Department of Justice shall maintain a Domestic Violence Protective Order Registry and shall make available to court clerks and law enforcement personnel, through computer access, all information regarding the protective and restraining orders and

injunctions described in subdivision (b), whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, the transmitting agency for the county shall immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms, and shall include a design, which local courts shall complete, that describes local court procedures and maps to enable applicants to locate filing windows and appropriate courts. The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this chapter to applicants free of charge.

(h) For the purposes of this part, "electronic transmission" shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

SEC. 2. Section 136.2 of the Penal Code is amended to read:

136.2. Upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, any court with jurisdiction over a criminal matter may issue orders including, but not limited to, the following:

(a) Any order issued pursuant to Section 6320 of the Family Code.

(b) An order that a defendant shall not violate any provision of Section 136.1.

(c) An order that a person before the court other than a defendant, including, but not limited to, a subpoenaed witness or other person entering the courtroom of the court, shall not violate any provisions of Section 136.1.

(d) An order that any person described in this section shall have no communication whatsoever with any specified witness or any victim, except through an attorney under any reasonable restrictions that the court may impose.

(e) An order calling for a hearing to determine if an order as described in subdivisions (a) to (d), inclusive, should be issued.

(f) An order that a particular law enforcement agency within the jurisdiction of the court provide protection for a victim or a witness, or both, or for immediate family members of a victim or a witness who reside in the same household as the victim or witness or within reasonable proximity of the victim's or witness's household, as determined by the court. The order shall not be made without the consent of the law enforcement agency except for limited and specified periods of time and upon an express finding by the court of

a clear and present danger of harm to the victim or witness or immediate family members of the victim or witness.

For purposes of this subdivision, "immediate family members" include the spouse, children, or parents of the victim or witness.

(g) Any order protecting victims of violent crime from contact, with the intent to annoy, harass, threaten, or commit acts of violence, by the defendant. The court or its designee shall transmit orders made under this subdivision to law enforcement personnel within one business day of the issuance of the order, pursuant to subdivision (a) of Section 6380 of the Family Code.

Any person violating any order made pursuant to subdivisions (a) to (g), inclusive, may be punished for any substantive offense described in Section 136.1, or for a contempt of the court making the order. A finding of contempt shall not be a bar to prosecution for a violation of Section 136.1. However, any person so held in contempt shall be entitled to credit for any punishment imposed therein against any sentence imposed upon conviction of an offense described in Section 136.1. Any conviction or acquittal for any substantive offense under Section 136.1 shall be a bar to a subsequent punishment for contempt arising out of the same act.

(h) (1) In all cases where the defendant is charged with a crime of domestic violence, as defined in Section 13700, the court shall consider issuing the above-described orders on its own motion. All interested parties shall receive a copy of those orders. In order to facilitate this, the court's records of all criminal cases involving domestic violence shall be marked to clearly alert the court to this issue.

(2) In those cases in which a complaint, information, or indictment charging a crime of domestic violence, as defined in Section 13700, has been issued, a restraining order or protective order against the defendant issued by the criminal court in that case has precedence over any other outstanding court order against the defendant.

(i) The Judicial Council shall adopt forms for orders under 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, the provisions of this act shall become operative

on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 188

An act to add Article 4 (commencing with Section 3119.5) to Chapter 8.5 of Division 4 of Title 1 of the Government Code, relating to volunteers.

[Approved by Governor July 18, 1998. Filed with Secretary of State July 20, 1998.]

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

SECTION 1. Article 4 (commencing with Section 3119.5) is added to Chapter 8.5 of Division 4 of Title 1 of the Government Code, to read:

Article 4. Senior Volunteers

3119.5. Notwithstanding Section 3118, any state or local agency that chooses to utilize volunteers shall implement a policy whereby no person aged 60 years or older may be excluded from volunteer service if the person is physically, mentally, and professionally capable of performing the services involved. A person shall be deemed professionally capable if he or she can demonstrate reasonable proficiency or relevant certification and performs his or her professional duties in accordance with laws, regulations, or technical standards governing his or her area of volunteer responsibility.

CHAPTER 189

An act to amend Sections 550 and 1170.11 of the Penal Code, relating to insurance fraud.

[Approved by Governor July 18, 1998. Filed with Secretary of State July 20, 1998.]

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

SECTION 1. Section 550 of the Penal Code is amended to read:

550. (a) It is unlawful to do any of the following, or to aid, abet, solicit, or conspire with any person to do any of the following:

(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss or injury, including payment of a loss or injury under a contract of insurance.

(2) Knowingly present multiple claims for the same loss or injury, including presentation of multiple claims to more than one insurer, with an intent to defraud.

(3) Knowingly cause or participate in a vehicular collision, or any other vehicular accident, for the purpose of presenting any false or fraudulent claim.

(4) Knowingly present a false or fraudulent claim for the payments of a loss for theft, destruction, damage, or conversion of a motor vehicle, a motor vehicle part, or contents of a motor vehicle.

(5) Knowingly prepare, make, or subscribe any writing, with the intent to present or use it, or to allow it to be presented in support of any false or fraudulent claim.

(6) Knowingly make or cause to be made any false or fraudulent claim for payment of a health care benefit.

(7) Knowingly submit a claim for a health care benefit which was not used by, or on behalf of, the claimant.

(8) Knowingly present multiple claims for payment of the same health care benefit with an intent to defraud.

(9) Knowingly present for payment any undercharges for health care benefits on behalf of a specific claimant unless any known overcharges for health care benefits for that claimant are presented for reconciliation at that same time.

(10) For purposes of paragraphs (6) to (9), inclusive, a claim or a claim for payment of a health care benefit also means a claim or claim for payment submitted by or on the behalf of a provider of any workers' compensation health benefits under the Labor Code.

(b) It is unlawful to do, or to knowingly assist or conspire with any person to do, any of the following:

(1) Present or cause to be presented any written or oral statement as part of, or in support of or opposition to, a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains any false or misleading information concerning any material fact.

(2) Prepare or make any written or oral statement that is intended to be presented to any insurer or any insurance claimant in connection with, or in support of or opposition to, any claim or payment or other benefit pursuant to an insurance policy, knowing that the statement contains any false or misleading information concerning any material fact.

(3) Conceal or knowingly fail to disclose the occurrence of an event that affects any person's initial or continued right or entitlement to any insurance benefit or payment, or the amount of any benefit or payment to which the person is entitled.

(4) Prepare or make any written or oral statement, intended to be presented to any insurer or producer for the purpose of obtaining a

motor vehicle insurance policy, that the person to be the insured resides or is domiciled in this state when, in fact, that person resides or is domiciled in a state other than this state.

(c) (1) Every person who violates paragraph (1), (2), (3), (4), or (5) of subdivision (a) is guilty of a felony punishable by imprisonment in the state prison for two, three, or five years, and by a fine not exceeding fifty thousand dollars ($50,000), unless the value of the fraud exceeds fifty thousand dollars ($50,000), in which event the fine may not exceed double of the value of the fraud.

(2) Every person who violates paragraph (6), (7), (8), or (9) of subdivision (a) is guilty of a public offense.

(A) Where the claim or amount at issue exceeds four hundred dollars ($400), the offense is punishable by imprisonment in the state prison for two, three, or five years, by a fine not exceeding fifty thousand dollars ($50,000), or by both that imprisonment and fine, unless the value of the fraud exceeds fifty thousand dollars ($50,000), in which event the fine may not exceed double the value of the fraud, or by imprisonment in a county jail not to exceed one year, by a fine of not more than one thousand dollars ($1,000), or by both that imprisonment and fine.

(B) Where the claim or amount at issue is four hundred dollars ($400) or less, the offense is punishable by imprisonment in a county jail not to exceed six months, by a fine of not more than one thousand dollars ($1,000), or by both that imprisonment and fine unless the aggregate amount of the claims or amount at issue exceeds four hundred dollars ($400) in any 12 consecutive month period, in which case the claims or amounts may be charged as in subparagraph (A).

(3) Every person who violates paragraph (1), (2), (3), or (4) of subdivision (b) shall be punished by imprisonment in the state prison for two, three, or five years, by a fine not exceeding fifty thousand dollars ($50,000), unless the value of the fraud exceeds fifty thousand dollars ($50,000), in which event the fine may not exceed double the value of the fraud, by both that imprisonment and fine, or by imprisonment in a county jail not to exceed one year, by a fine of not more than one thousand dollars ($1,000), or by both that imprisonment and fine.

(d) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of a sentence be suspended for, any adult person convicted of felony violations of this section who previously has been convicted of felony violations of this section or Section 548, or of Section 1871.4 of the Insurance Code, or former Section 556 of the Insurance Code, or former Section 1871.1 of the Insurance Code as an adult under charges separately brought and tried two or more times. The existence of any fact which would make a person ineligible for probation under this subdivision shall be alleged in the information or indictment, and either admitted by the defendant in an 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.

Except where the existence of the fact was not admitted or found to be true or the court finds that a prior felony conviction was invalid, the court shall not strike or dismiss any prior felony convictions alleged in the information or indictment.

This subdivision shall not prohibit the adjournment of criminal proceedings pursuant to Division 3 (commencing with Section 3000) of, or Division 6 (commencing with Section 6000) of, the Welfare and Institutions Code.

(e) Except as otherwise provided in subdivision (f), person who violates subdivision (a) or (b) and who has a prior felony conviction of an offense set forth in either subdivision, in Section 548, in Section 1871.4 of the Insurance Code, in former Section 556 of the Insurance Code, or in former Section 1871.1 of the Insurance Code shall receive a two-year enhancement for each prior felony conviction in addition to the sentence provided in subdivision (c). The existence of any fact which would subject a person to a penalty enhancement 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. Any person who violates this section shall be subject to appropriate orders of restitution pursuant to Section 13967 of the Government Code.

(f) Any person who violates paragraph (3) of subdivision (a) and who has two prior felony convictions for violation of paragraph (3) of subdivision (a) shall receive a five-year enhancement in addition to the sentence provided in subdivision (c). The existence of any fact which would subject a person to a penalty enhancement 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.

(g) Except as otherwise provided in Section 12022.7, any person who violates paragraph (3) of subdivision (a) shall receive a two-year enhancement for each person other than an accomplice who suffers serious bodily injury resulting from the vehicular collision or accident in a violation of paragraph (3) of subdivision (a).

(h) No portion of this section shall be construed to preclude the applicability of any other provision of criminal law or equitable remedy that applies or may apply to any act committed or alleged to have been committed by a person.

SEC. 2. Section 1170.11 of the Penal Code is amended to read:

1170.11. As used in Section 1170.1, the term "specific enhancement" includes, but is not limited to, the enhancements provided in Sections 186.10, 186.11, 186.22, 273.4, 290, 290.4, and 347, subdivisions (a), (b), and (c) of Section 422.75, Sections 451.1 and 452.1, subdivision (g) of Section 550, Sections 593a, 600, 667.8, 667.83,

667.85, 667.9, 667.10, 667.15, 667.16, 674, 12021.5, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, 12022.85, 12022.9, 12022.95, 12072, and 12280 of this code, and in Section 11353.1, subdivision (b) of Section 11353.4, Sections 11353.6, 11356.5, 11370.4, 11379.7, 11379.8, 11380.1, and 11380.5 of the Health and Safety Code, and in Sections 20001 and 23182 of the Vehicle Code.

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 that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 190

An act to amend Sections 417 and 832.6 of, and to repeal Section 417.1 of, the Penal Code, relating to peace officers.

[Approved by Governor July 18, 1998. Filed with Secretary of State July 20, 1998.]

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

SECTION 1. 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, shall be punished 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 officer" means any person designated as a peace officer pursuant to Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

SEC. 2. Section 417.1 of the Penal Code is repealed.

SEC. 3. Section 832.6 of the Penal Code is amended to read:

832.6. (a) Every person deputized or appointed, as described in subdivision (a) of Section 830.6, shall have the powers of a peace officer only when the person is any of the following:

(1) A level I reserve officer deputized or appointed pursuant to paragraph (1) or (2) of subdivision (a) or subdivision (b) of Section 830.6 and assigned to the prevention and detection of crime and the general enforcement of the laws of this state, whether or not working alone, and the person has completed the basic training course for deputy sheriffs and police officers prescribed by the Commission on Peace Officer Standards and Training. For level I reserve officers appointed prior to January 1, 1997, the basic training requirement shall be the course that was prescribed at the time of their appointment. Reserve officers appointed pursuant to this paragraph shall satisfy the continuing professional training requirement prescribed by the commission.

(2) A level II reserve officer assigned to the prevention and detection of crime and the general enforcement of the laws of this state while under the immediate supervision of a peace officer who has completed the basic training course for deputy sheriffs and police officers prescribed by the Commission on Peace Officer Standards

and Training, and the level II reserve officer has completed the course required by Section 832 and any other training prescribed by the commission.

Level II reserve officers appointed pursuant to this paragraph may be assigned, without immediate supervision, to those limited duties that are authorized for level III reserve officers pursuant to paragraph (3). Reserve officers appointed pursuant to this paragraph shall satisfy the continuing professional training requirement prescribed by the commission.

(3) Level III reserve officers may be deployed and are authorized only to carry out limited support duties not requiring general law enforcement powers in their routine performance. Those limited duties shall include traffic control, security at parades and sporting events, report taking, evidence transportation, parking enforcement, and other duties that are not likely to result in physical arrests. Level III reserve officers while assigned these duties shall be supervised in the accessible vicinity by a level I reserve officer or a full-time, regular peace officer employed by a law enforcement agency authorized to have reserve officers. Level III reserve officers may transport prisoners without immediate supervision. Those persons shall have completed the training required under Section 832 and any other training prescribed by the commission for those persons.

(4) A person assigned to the prevention and detection of a particular crime or crimes or to the detection or apprehension of a particular individual or individuals while working under the supervision of a California peace officer in a county adjacent to the state border who possesses a basic certificate issued by the Commission on Peace Officer Standards and Training, and the person is a law enforcement officer who is regularly employed by a local or state law enforcement agency in an adjoining state and has completed the basic training required for peace officers in his or her state.

This training shall fully satisfy any other training requirements required by law, including those specified in Section 832.

In no case shall a peace officer of an adjoining state provide services within a California jurisdiction during any period in which the regular law enforcement agency of the jurisdiction is involved in a labor dispute.

(b) Notwithstanding subdivision (a), a person who is issued a level I reserve officer certificate before January 1, 1981, shall have the full powers and duties of a peace officer as provided by Section 830.1 if so designated by local ordinance or, if the local agency is not authorized to act by ordinance, by resolution, either individually or by class, if the appointing authority determines the person is qualified to perform general law enforcement duties by reason of the person's training and experience. Persons who were qualified to be issued the level I reserve officer certificate before January 1, 1981, and who state

in writing under penalty of perjury that they applied for but were not issued the certificate before January 1, 1981, may be issued the certificate before July 1, 1984. For purposes of this section, certificates so issued shall be deemed to have the full force and effect of any level I reserve officer certificate issued prior to January 1, 1981.

(c) In carrying out this section, the commission:

(1) May use proficiency testing to satisfy reserve training standards.

(2) Shall provide for convenient training to remote areas in the state.

(3) Shall establish a professional certificate for reserve officers as defined in paragraph (1) of subdivision (a) and may establish a professional certificate for reserve officers as defined in paragraphs (2) and (3) of subdivision (a).

(4) Shall facilitate the voluntary transition of reserve officers to regular officers with no unnecessary redundancy between the training required for level I and level II reserve officers.

(5) Shall develop a supplemental course for existing level I reserve officers desiring to satisfy the basic training course for deputy sheriffs and police officers.

(d) In carrying out paragraphs (1) and (3) of subdivision (c), the commission may establish and levy appropriate fees, provided the fees do not exceed the cost for administering the respective services. These fees shall be deposited in the Peace Officers' Training Fund established by Section 13520.

(e) The commission shall include an amount in its annual budget request to carry out this section.

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 that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 191

An act to add Section 21635.5 to the Government Code, relating to public employees.

[Approved by Governor July 20, 1998. Filed with Secretary of State July 21, 1998.]

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

SECTION 1. Section 21635.5 is added to the Government Code, to read:

21635.5. (a) Notwithstanding any other provision of this part, on and after the effective date of this section, the remarriage of the surviving spouse of a deceased local safety member who was a firefighter, or peace officer as described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, whose death after retirement was due to injuries which resulted in industrial disability retirement, shall not result in the reduction or cessation of any survivor continuance if the remarriage occurs on or after January 1, 1998. However, pursuant to Section 22811.5, the surviving spouse may not add the new spouse or stepchildren as family members under the continued health benefits coverage of the surviving spouse.

(b) The surviving spouse of a deceased retired local safety member whose death after retirement was due to injuries which resulted in industrial disability retirement who previously lost entitlement due to remarriage shall be entitled to resume payment of the benefit effective either on January 1, 1999, or the first of the month following receipt by the board of a written application for resumption of benefits, whichever date is later. The amount of the benefit payable shall be calculated as though the benefit had been paid without interruption from the date of remarriage through the benefit resumption effective date.

(c) The board has no duty to identify, locate, or notify a remarried spouse who previously lost entitlement about the resumption of benefits provided in this section. The board has no duty to provide the name or address of any remarried spouse to any person, agency, or entity for the purpose of notifying those who may be eligible under this section.

(d) Nothing in this section shall be construed to imply that the benefits addressed will be paid retroactively.

CHAPTER 192

An act to add Section 556.4 to the Penal Code, relating to trespass.

[Approved by Governor July 20, 1998. Filed with Secretary of State July 21, 1998.]

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

SECTION 1. Section 556.4 is added to the Penal Code, to read:

556.4. For purposes of this article, information that appears on any sign, picture, transparency, advertisement, or mechanical device

such as, but not limited to, the following, may be used as evidence to establish the fact, and may create an inference, that a person or entity is responsible for the posting of the sign, picture, transparency, advertisement, or mechanical device:

(a) The name, telephone number, address, or other identifying information regarding the real estate broker, real estate brokerage firm, real estate agent, or other person associated with the firm.

(b) The name, telephone number, address, or other identifying information of the owner or lessee of property used for a commercial activity or event.

(c) The name, telephone number, address, or other identifying information of the sponsor or promoter of a sporting event, concert, theatrical performance, or similar activity or event.

CHAPTER 193

An act to amend Section 890 of the Civil Code, and to add Section 602.9 to the Penal Code, relating to rent skimming.

[Approved by Governor July 20, 1998. Filed with Secretary of State July 21, 1998.]

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

SECTION 1. Section 890 of the Civil Code is amended to read:

890. (a) (1) "Rent skimming" means using revenue received from the rental of a parcel of residential real property at any time during the first year period after acquiring that property without first applying the revenue or an equivalent amount to the payments due on all mortgages and deeds of trust encumbering that property.

(2) For purposes of this section, "rent skimming" also means receiving revenue from the rental of a parcel of residential real property where the person receiving that revenue, without the consent of the owner or owner's agent, asserted possession or ownership of the residential property, whether under a false claim of title, by trespass, or any other unauthorized means, rented the property to another, and collected rents from the other person for the rental of the property. This paragraph does not apply to any tenant, subtenant, lessee, sublessee, or assignee, nor to any other hirer having a lawful occupancy interest in the residential dwelling.

(b) "Multiple acts of rent skimming" means knowingly and willfully rent skimming with respect to each of five or more parcels of residential real property acquired within any two-year period.

(c) "Person" means any natural person, any form of business organization, its officers and directors, and any natural person who authorizes rent skimming or who, being in a position of control, fails to prevent another from rent skimming.

SEC. 2. Section 602.9 is added to the Penal Code, to read:

602.9. (a) Except as provided in subdivision (c), any person who, without the owner's or owner's agent's consent, claims ownership or claims or takes possession of a residential dwelling for the purpose of renting that dwelling to another is guilty of 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 such imprisonment and fine. Each violation is a separate offense.

(b) Except as provided in subdivision (c), any person who, without the owner's or owner's agent's consent, causes another person to enter or remain in any residential dwelling for the purpose of renting that dwelling to another, is guilty of 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 such imprisonment and fine. Each violation is a separate offense.

(c) This section does not apply to any tenant, subtenant, lessee, sublessee, or assignee, nor to any other hirer having a lawful occupancy interest in the residential dwelling.

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 that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 194

An act to amend Section 121745 of, and to repeal Sections 121725, 121730, 121735, 121740, and 121755 of, the Health and Safety Code, relating to communicable diseases.

[Approved by Governor July 20, 1998. Filed with Secretary of State July 21, 1998.]

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

SECTION 1. Section 121725 of the Health and Safety Code is repealed.

SEC. 2. Section 121730 of the Health and Safety Code is repealed.

SEC. 3. Section 121735 of the Health and Safety Code is repealed.

SEC. 4. Section 121740 of the Health and Safety Code is repealed.

SEC. 5. Section 121745 of the Health and Safety Code is amended to read:

121745. (a) Whenever the director finds that psittacosis, or any other diseases transmissible to man from pet birds, have become a public health hazard to the extent that control measures are necessary or desirable, the department shall adopt additional regulations as it deems necessary for the public health; and these regulations shall apply to all pet birds whether or not of a species otherwise regulated under this chapter. These regulations shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) This section shall not be operative during the 1993–94 fiscal year.

SEC. 6. Section 121755 of the Health and Safety Code is repealed.

CHAPTER 195

An act to amend Sections 51, 51.5, 51.8, and 52 of, and to add Section 52.2 to, the Civil Code, relating to civil rights.

[Approved by Governor July 20, 1998. Filed with Secretary of State July 21, 1998.]

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

SECTION 1. Section 51 of the Civil Code is amended to read:

51. This section shall be known, and may be cited, as the Unruh Civil Rights Act.

All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, or disability are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

This section shall not be construed to confer any right or privilege on a person that is conditioned or limited by law or that is applicable alike to persons of every sex, color, race, religion, ancestry, national origin, or disability.

Nothing in this section shall be construed to require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever, beyond that construction, alteration, repair, or modification that is otherwise required by other provisions of law, to any new or existing establishment, facility, building, improvement, or any other structure, nor shall anything in this section be construed to augment, restrict, or alter in any way the authority of the State Architect to require construction, alteration,

repair, or modifications that the State Architect otherwise possesses pursuant to other laws.

A violation of the right of any individual under the Americans with Disabilities Act of 1990 (Public Law 101-336) shall also constitute a violation of this section.

SEC. 2. Section 51.5 of the Civil Code is amended to read:

51.5. No business establishment of any kind whatsoever shall discriminate against, boycott or blacklist, refuse to buy from, sell to, or trade with any person in this state because of the race, creed, religion, color, national origin, sex, or disability of the person or of the person's partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers, or customers.

As used in this section, "person" includes any person, firm, association, organization, partnership, business trust, corporation, limited liability company, or company.

Nothing in this section shall be construed to require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever, beyond that construction, alteration, repair, or modification that is otherwise required by other provisions of law, to any new or existing establishment, facility, building, improvement, or any other structure, nor shall anything in this section be construed to augment, restrict, or alter in any way the authority of the State Architect to require construction, alteration, repair, or modifications that the State Architect otherwise possesses pursuant to other laws.

SEC. 3. Section 51.8 of the Civil Code is amended to read:

51.8. No franchisor shall discriminate in the granting of franchises solely because of the race, color, religion, sex, national origin, or disability of the franchisee and the racial, ethnic, religious, national origin, or disability composition of a neighborhood or geographic area in which the franchise is located. Nothing in this section shall be interpreted to prohibit a franchisor from granting a franchise to prospective franchisees as part of a program or programs to make franchises available to persons lacking the capital, training, business experience, or other qualifications ordinarily required of franchisees, or any other affirmative action program adopted by the franchisor.

Nothing in this section shall be construed to require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever, beyond that construction, alteration, repair, or modification that is otherwise required by other provisions of law, to any new or existing establishment, facility, building, improvement, or any other structure, nor shall anything in this section be construed to augment, restrict, or alter in any way the authority of the State Architect to require construction, alteration, repair, or modifications that the State Architect otherwise possesses pursuant to other laws.

SEC. 4. Section 52 of the Civil Code is amended to read:

52. (a) Whoever denies, aids or incites a denial, or makes any discrimination or distinction contrary to Section 51 or 51.5, is liable for each and every offense for the actual damages, and any amount that may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the amount of actual damage but in no case less than one thousand dollars ($1,000), and any attorney's fees that may be determined by the court in addition thereto, suffered by any person denied the rights provided in Section 51 or 51.5.

(b) Whoever denies the right provided by Section 51.7, or aids, incites, or conspires in that denial, is liable for each and every offense for the actual damages suffered by any person denied that right and, in addition, the following:

(1) An amount to be determined by a jury, or a court sitting without a jury, for exemplary damages.

(2) A civil penalty of twenty-five thousand dollars ($25,000) to be awarded to the person denied the right provided by Section 51.7.

(3) Attorney's fees as may be determined by the court.

(c) Whenever there is reasonable cause to believe that any person or group of persons is engaged in conduct of resistance to the full enjoyment of any of the rights hereby secured, and that conduct is of that nature and is intended to deny the full exercise of the rights herein described, the Attorney General, any district attorney or city attorney, or any person aggrieved by the conduct may bring a civil action in the appropriate court by filing with it a complaint. The complaint shall contain the following:

(1) The signature of the officer, or, in his or her absence, the individual acting on behalf of the officer, or the signature of the person aggrieved.

(2) The facts pertaining to the conduct.

(3) A request for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for the conduct, as the complainant deems necessary to insure the full enjoyment of the rights herein described.

(d) Whenever an action has been commenced in any court seeking relief from the denial of equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States on account of race, color, religion, sex, national origin, or disability, the Attorney General or any district attorney or city attorney for or in the name of the people of the State of California may intervene in the action upon timely application if the Attorney General or any district attorney or city attorney certifies that the case is of general public importance. In that action, the people of the State of California shall be entitled to the same relief as if it had instituted the action.

(e) Actions under this section shall be independent of any other remedies or procedures that may be available to an aggrieved party.

(f) Any person claiming to be aggrieved by an alleged unlawful practice in violation of Section 51 or 51.7 may also file a verified complaint with the Department of Fair Employment and Housing pursuant to Section 12948 of the Government Code.

(g) Nothing in this section shall be construed to require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever, beyond that construction, alteration, repair, or modification that is otherwise required by other provisions of law, to any new or existing establishment, facility, building, improvement, or any other structure, nor shall anything in this section be construed to augment, restrict, or alter in any way the authority of the State Architect to require construction, alteration, repair, or modifications that the State Architect otherwise possesses pursuant to other laws.

(h) For the purposes of this section, "actual damages" means special and general damages. This subdivision is declaratory of existing law.

SEC. 5. Section 52.2 is added to the Civil Code, to read:

52.2. An action pursuant to Section 52 or 54.3 may be brought in any court of competent jurisdiction. A "court of competent jurisdiction" shall include small claims court if the amount of the damages sought in the action does not exceed five thousand dollars ($5,000).

CHAPTER 196

An act to amend Section 9855 of the Business and Professions Code, and to amend Section 1791 of the Civil Code, relating to service contracts.

[Approved by Governor July 20, 1998. Filed with Secretary of State July 21, 1998.]

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

SECTION 1. Section 9855 of the Business and Professions Code is amended to read:

9855. The definitions used in this section shall govern the construction and terms as used in this chapter:

(a) "Service contract" means a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance, replacement, or repair of a set or appliance as defined by this chapter.

(b) "Service contract administrator" or "administrator" means a person, other than a service contract seller or an insurer admitted to do business in this state, who performs or arranges, or has an affiliate who performs or arranges, the collection, maintenance, or

disbursement of moneys to compensate any party for claims or repairs pursuant to a service contract, and who also performs or arranges, or has an affiliate who performs or arranges, any of the following activities on behalf of service contract sellers:

(1) Providing service contract sellers with service contract forms.

(2) Participating in the adjustment of claims arising from service contracts.

(3) Arranging on behalf of service contract sellers the insurance required by Section 9855.2.

A service contract administrator shall not be an obligor on a service contract.

(c) "Service contract seller" or "seller" means a person who sells or offers to sell a service contract to a service contractholder, including a person who is the obligor under a service contract sold by the seller, manufacturer, or repairer of the product covered by the service contract.

(d) "Service contractholder" means a person who purchases or receives a service contract from a service contract seller.

(e) "Service contractor" means a service contract administrator or a service contract seller.

(f) "Service contract reimbursement insurance policy" means a policy of insurance issued by an insurer admitted to do business in this state providing coverage for all obligations and liabilities incurred by a service contract seller under the terms of the service contracts sold in this state by the service contract seller to a service contractholder. The service contract reimbursement insurance policy shall either cover all service contracts sold or specifically cover those contracts sold to residents of the State of California.

(g) "Obligor" is the entity financially and legally obligated under the terms of a service contract.

SEC. 2. Section 1791 of the Civil Code is amended to read:

1791. As used in this chapter:

(a) "Consumer goods" means any new product or part thereof that is used, bought, or leased for use primarily for personal, family, or household purposes, except for clothing and consumables. "Consumer goods" shall include new and used assistive devices sold at retail.

(b) "Buyer" or "retail buyer" means any individual who buys consumer goods from a person engaged in the business of manufacturing, distributing, or selling consumer goods at retail. As used in this subdivision, "person" means any individual, partnership, corporation, limited liability company, association, or other legal entity that engages in any such business.

(c) "Clothing" means any wearing apparel, worn for any purpose, including under and outer garments, shoes, and accessories composed primarily of woven material, natural or synthetic yarn, fiber, or leather or similar fabric.

(d) "Consumables" means any product that is intended for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and that usually is consumed or expended in the course of consumption or use.

(e) "Distributor" means any individual, partnership, corporation, association, or other legal relationship that stands between the manufacturer and the retail seller in purchases, consignments, or contracts for sale of consumer goods.

(f) "Independent repair or service facility" or "independent service dealer" means any individual, partnership, corporation, association, or other legal entity, not an employee or subsidiary of a manufacturer or distributor, that engages in the business of servicing and repairing consumer goods.

(g) "Lease" means any contract for the lease or bailment for the use of consumer goods by an individual, for a term exceeding four months, primarily for personal, family, or household purposes, whether or not it is agreed that the lessee bears the risk of the consumer goods' depreciation.

(h) "Lessee" means an individual who leases consumer goods under a lease.

(i) "Lessor" means a person who regularly leases consumer goods under a lease.

(j) "Manufacturer" means any individual, partnership, corporation, association, or other legal relationship that manufactures, assembles, or produces consumer goods.

(k) "Place of business" means, for the purposes of any retail seller that sells consumer goods by catalog or mail order, the distribution point for these goods.

(*l*) "Retail seller," "seller," or "retailer" means any individual, partnership, corporation, association, or other legal relationship that engages in the business of selling or leasing consumer goods to retail buyers.

(m) "Return to the retail seller" means, for the purposes of any retail seller that sells consumer goods by catalog or mail order, the retail seller's place of business, as defined in subdivision (k).

(n) "Sale" means (1) the passing of title from the seller to the buyer for a price, or (2) a consignment for sale.

(o) "Service contract" means a contract in writing to perform, for an additional cost, over a fixed period of time or for a specified duration, services relating to the maintenance, replacement, or repair of a consumer product, except that this term does not include a policy of automobile insurance, as defined in Section 116 of the Insurance Code.

(p) "Service contract administrator" or "administrator" means a person, other than a service contract seller or an insurer admitted to do business in this state, who performs or arranges, or has an affiliate who performs or arranges, the collection, maintenance, or

disbursement of moneys to compensate any party for claims or repairs pursuant to a service contract, and who also performs or arranges, or has an affiliate who performs or arranges, any of the following activities on behalf of service contract sellers:

(1) Providing service contract sellers with service contract forms.

(2) Participating in the adjustment of claims arising from service contracts.

(3) Arranging on behalf of service contract sellers the insurance required by Section 9855.2. A service contract administrator shall not be an obligor on a service contract.

(q) "Service contract seller" or "seller" means a person who sells or offers to sell a service contract to a service contractholder, including a person who is the obligor under a service contract sold by the seller, manufacturer, or repairer of the product covered by the service contract.

(r) "Service contractor" means a service contract administrator or a service contract seller.

(s) "Assistive device" means any instrument, apparatus, or contrivance, including any component or part thereof or accessory thereto, that is used or intended to be used, to assist an individual with a disability in the mitigation or treatment of an injury or disease or to assist or affect or replace the structure or any function of the body of an individual with a disability, except that this term does not include prescriptive lenses and other ophthalmic goods unless they are sold or dispensed to a blind person, as defined in Section 19153 of the Welfare and Institutions Code, and unless they are intended to assist the limited vision of the person so disabled.

(t) "Catalog or similar sale" means a sale in which neither the seller nor any employee or agent of the seller nor any person related to the seller nor any person with a financial interest in the sale participates in the diagnosis of the buyer's condition or in the selection or fitting of the device.

(u) "Home appliance" means any refrigerator, freezer, range, microwave oven, washer, dryer, dishwasher, garbage disposal, trash compactor, room air-conditioner, or other kind of appliance product normally used or sold for personal, family, or household purposes.

(v) "Home electronic product" means any television, radio, antenna rotator, audio or video recorder or playback equipment, video camera, video game, video monitor, computer equipment, telephone, telecommunications equipment, electronic alarm system, electronic appliance control system, or other kind of electronic product, if it is normally used or sold for personal, family, or household purposes. The term includes any electronic accessory that is normally used or sold with a home electronic product for one of those purposes. The term excludes any single product with a wholesale price to the retail seller of less than fifty dollars ($50).

(w) "Obligor" is the entity financially and legally obligated under the terms of a service contract.

This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

CHAPTER 197

An act to amend Section 987.88 of the Military and Veterans Code, relating to veterans, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 20, 1998. Filed with Secretary of State July 21, 1998.]

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

SECTION 1. Section 987.88 of the Military and Veterans Code is amended to read:

987.88. (a) In the event the department enters into a master agreement with one or more insurance companies to provide life or disability insurance coverage for the purchasers of farms and homes from the department, the master agreement shall provide that the life insurance will be offered to purchasers who are disabled solely as a result of their qualifying military service and to nondisabled purchasers on an equal basis and that no purchaser shall be denied coverage solely because that purchaser has a qualifying military service-connected disability at the time of application. Notwithstanding Part 2 (commencing with Section 10110) of Division 2 of the Insurance Code, the life or disability insurance shall be a form of group life or group disability insurance.

(b) The master agreement shall provide for maintenance of those reserves as the department, after consultation with the Insurance Commissioner, deems appropriate and prudent, and the department may use from time to time any accumulated surplus in those reserves, or any refunds or returns therefrom upon termination of the agreement, for the purposes of this article or of any veterans general obligation or revenue bond act. Any and all acts of the department in maintaining and using the reserves consistent with this subdivision are hereby ratified and confirmed, it having at all times been the intent of the Legislature that reserves be maintained and that any surpluses therein or refunds or returns therefrom be used by the department for the purposes stated in this subdivision.

(c) Notwithstanding subdivision (b), on and after January 1, 1987, any reserves maintained under the master agreement shall not exceed a level greater than 20 percent in excess of actuarial requirements plus a reasonable contingency reserve, as determined annually by the department, and the department may contract with

one or more independent actuaries or actuarial firms to assist the department in the annual determination.

(d) Any departmental proposal to enter into, revise, amend, renew, extend, or cancel, any agreement described in this section shall be a policy change subject to subdivisions (b), (c), and (d) of Section 84.

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

In order to ensure that veteran's life or disability coverage is properly protected by adequate reserves, it is necessary that this act take effect immediately.

CHAPTER 198

An act to amend Section 21687 of the Public Utilities Code, relating to airports.

[Approved by Governor July 20, 1998. Filed with Secretary of State July 21, 1998.]

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

SECTION 1. Section 21687 of the Public Utilities Code is amended to read:

21687. (a) (1) If an airport, for which payments have been made from the Aeronautics Account, ceases to be open to the general public for more than one year, the public entity to which those payments were made shall pay to the state the amount computed by the department pursuant to paragraph (2), and those funds shall be deposited in the Aeronautics Account.

(2) The department shall compute an amount equal to the total of all payments made for the airport from the Aeronautics Account during the preceding 20 years less 5 percent of the amount of a particular payment multiplied by the number of years since the payment was made, or the unused balance, whichever is greater. The computation shall not include any payment the department made pursuant to Section 21682, if, upon the request of the public entity that owns and operates the airport, the department determines that the airport is not necessary to the system of public airports in this state.

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

(1) An airport that is replaced by a comparable facility, as determined by the department, within a period of one year.

(2) An airport for which the department, on or after January 1, 1981, has suspended the airport permit and for which payments made

pursuant to this article are being expended to correct the deficiency or condition that resulted in the suspension of the airport's permit.

CHAPTER 199

An act to amend Sections 9, 2154, 3010, 7244, 7570, 7608, 7612, 7620, 7671, 7694, 7770, 7840, 7884, 10229, 10411, 10512, 10706, 12302, 13201, 15310, 15501, 15628, and 15651 of, to add Sections 7236 and 15278 to, and to repeal Sections 347, 2207, 6181, 7000, 7552, 7553, 7554, 7558, 7560, 7601, 7602, 7606, 7607, 7621, 7625, 7626, 7627, 7784, 7785, 7801, 10414, 10415, 13003, and 15273 of, the Elections Code, and to amend Section 6254.4 of the Government Code, relating to elections.

[Approved by Governor July 20, 1998. Filed with Secretary of State July 21, 1998.]

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

SECTION 1. Section 9 of the Elections Code is amended to read:

9. (a) Counting of words, for purposes of this code, shall be as follows:

(1) Punctuation is not counted.

(2) Each word shall be counted as one word except as specified in this section.

(3) All geographical names shall be considered as one word; for example, "City and County of San Francisco" shall be counted as one word.

(4) Each abbreviation for a word, phrase, or expression shall be counted as one word.

(5) Hyphenated words that appear in any generally available dictionary shall be considered as one word. Each part of all other hyphenated words shall be counted as a separate word.

(6) Dates consisting of a combination of words and digits shall be counted as two words. Dates consisting only of a combination of digits shall be counted as one word.

(7) Any number consisting of a digit or digits shall be considered as one word. Any number which is spelled, such as "one," shall be considered as a separate word or words. "One" shall be counted as one word whereas "one hundred" shall be counted as two words. "100" shall be counted as one word.

(8) Telephone numbers shall be counted as one word.

(9) Internet web site addresses shall be counted as one word.

(b) This section shall not apply to counting words for ballot designations under Section 13107.

SEC. 2. Section 347 of the Elections Code is repealed.

SEC. 3. Section 2154 of the Elections Code is amended to read:

2154. In the event that the county elections official receives an affidavit of registration that does not include portions of the information for which space is provided, the county elections official or registrar of voters shall apply the following rebuttable presumptions:

(a) If no middle name or initial is shown, it shall be presumed that none exists.

(b) If no party affiliation is shown, it shall be presumed that the affiant has no party affiliation.

(c) If no execution date is shown, it shall be presumed that the affidavit was executed on or before the 29th day prior to the election, provided that (1) the affidavit is received by the county elections official on or before the 29th day prior to the election, (2) the affidavit is received by mail by the county elections official no later than the fourth day after the 29th day prior to the election, or (3) the affidavit is postmarked on or before the 29th day prior to the election and received by mail by the county elections official.

(d) If the affiant fails to identify his or her state of birth within the United States, it shall be presumed that the affiant was born in a state or territory of the United States if the birthplace of the affiant is shown as "United States," "U.S.A.," or other recognizable term designating the United States.

SEC. 4. Section 2207 of the Elections Code is repealed.

SEC. 5. Section 3010 of the Elections Code is amended to read:

3010. The elections official shall deliver to each qualified applicant:

(a) The ballot for the precinct in which he or she resides. In primary elections this shall also be accompanied by the ballot for the central committee of the party with which the voter is affiliated, if any.

(b) All supplies necessary for the use and return of the ballot.

No officer of this state may make any charge for services rendered to any voter under this chapter.

SEC. 6. Section 6181 of the Elections Code is repealed.

SEC. 7. Section 7000 of the Elections Code is repealed.

SEC. 8. Section 7236 is added to the Elections Code, to read:

7236. The Department of General Services shall permit any committee to hold meetings in a state building within the county. At least one committee meeting each month shall be free of charge.

SEC. 9. Section 7244 of the Elections Code is amended to read:

7244. Within five days after a committee meets for its organizational meeting, the newly elected chairperson of the committee shall notify the county elections official of his or her name.

SEC. 10. Section 7552 of the Elections Code is repealed.

SEC. 11. Section 7553 of the Elections Code is repealed.

SEC. 12. Section 7554 of the Elections Code is repealed.

SEC. 13. Section 7558 of the Elections Code is repealed.

SEC. 14. Section 7560 of the Elections Code is repealed.

SEC. 15. Section 7570 of the Elections Code is amended to read:

7570. The state convention shall meet biennially, at a location designated by the state central committee, at 10 a.m. on a Saturday following the direct primary election, but in no event later than August 15.

SEC. 16. Section 7601 of the Elections Code is repealed.

SEC. 17. Section 7602 of the Elections Code is repealed.

SEC. 18. Section 7606 of the Elections Code is repealed.

SEC. 19. Section 7607 of the Elections Code is repealed.

SEC. 20. Section 7608 of the Elections Code is amended to read:

7608. Each delegate to the state convention shall send a notice by mail to each person whom he or she has appointed as a member of this committee, that will inform him or her that:

(a) He or she is a member of the committee.

(b) The committee will meet in Sacramento and the date of the meeting.

(c) The meeting may be attended either in person or by proxy.

(d) The proxy shall be in writing, and signed by the member under penalty of perjury.

SEC. 21. Section 7612 of the Elections Code is amended to read:

7612. Should a member appointed to membership pursuant to Section 7603 or 7604 cease to be a member for any of the reasons specified in Section 7611, the vacancy shall be filled by the person who appointed him or her, unless that person is himself or herself no longer a member of this committee or indicates that he or she does not wish to fill the vacancy, in which instances the committee shall do so.

Notice shall be given by the committee to a person entitled to fill a vacancy under this section as soon as possible after the occurrence of the vacancy.

SEC. 22. Section 7620 of the Elections Code is amended to read:

7620. The committee shall convene in the same community where the state convention is held, at 10 a.m. on the Sunday following the state convention.

SEC. 23. Section 7621 of the Elections Code is repealed.

SEC. 24. Section 7625 of the Elections Code is repealed.

SEC. 25. Section 7626 of the Elections Code is repealed.

SEC. 26. Section 7627 of the Elections Code is repealed.

SEC. 27. Section 7671 of the Elections Code is amended to read:

7671. The Secretary of State, no later than 125 days before the direct primary, shall compute the number of members of central committees to be elected in each county, and shall mail a certificate reporting that information to the elections official of each county and to the Chairperson of the American Independent Party State Central Committee.

SEC. 28. Section 7694 of the Elections Code is amended to read:

7694. Within five days after a committee meets for its organizational meeting, the newly elected chairperson of the committee shall notify the elections official of his or her name.

SEC. 29. Section 7770 of the Elections Code is amended to read:

7770. The Secretary of State, no later than the 125th day before the direct primary election, shall compute the number of members of central committees to be elected in each county and shall mail a certificate to that effect to the elections official of each county and to the Chairperson of the Peace and Freedom Party State Central Committee.

SEC. 30. Section 7784 of the Elections Code is repealed.

SEC. 31. Section 7785 of the Elections Code is repealed.

SEC. 32. Section 7801 of the Elections Code is repealed.

SEC. 33. Section 7840 of the Elections Code is amended to read:

7840. The state central committee shall have power to appoint interim county central committees in the following counties:

(a) Counties in which the voters have not elected one or more members of central committees in the direct primary election preceding the organization of this committee.

(b) Counties in which all members of a county central committee are removed from office or cease to be registered as affiliated with the Peace and Freedom Party.

Persons appointed to interim county central committees pursuant to this section shall meet the qualifications otherwise required of appointees to membership on the county central committees. Notice of any appointments pursuant to this section shall be filed by the state central committee with the elections official of the county for which that interim county central committee is appointed. Interim county central committees appointed pursuant to this section shall have all the powers and privileges afforded county central committees by this part.

SEC. 34. Section 7884 of the Elections Code is amended to read:

7884. Within five days after a committee meets for its organizational meeting, the newly elected chairperson of the committee shall notify the county elections official of his or her name.

SEC. 35. Section 10229 of the Elections Code is amended to read:

10229. (a) If, by 5 p.m. on the 88th day prior to the day fixed for a regularly scheduled municipal election or the 83rd day if an incumbent fails to file pursuant to Section 10225, (i) no one or only one person has been nominated for any office which is elected on a citywide basis, or (ii) no one or only one person is nominated to be elected from or by a legislative district, or (iii) in the case of any office or offices to be elected at large, the number of persons who have been nominated for those offices does not exceed the number to be filled at that election; or, if, by the 88th day, during normal business hours, as posted, before a municipal election to fill any vacancy in office, no one, or only one person has been nominated for any elective office to be filled at that election, and the election is subject to Section 36512

of the Government Code, the city elections official shall submit a certificate of these facts to the governing body of the city and inform the governing body of the city that it may, at a regular or special meeting held before the municipal election, adopt one of the following courses of action:

(1) Appoint to the office the person who has been nominated.

(2) Appoint to the office any eligible elector if no one has been nominated.

(3) Hold the election, if either no one, or only one person has been nominated. The city elections official shall publish a notice of the facts described in this section and the courses of action available under this subdivision. Publication shall be made pursuant to Section 6061 of the Government Code in any newspaper of general circulation as designated by the city elections official.

After the fifth day following the date of posting or publication, the governing body of the city may make the appointment or direct an election to be held in the affected territory. The person appointed, if any, shall qualify and take office and serve exactly as if elected at a municipal election for the office.

Notwithstanding Section 10403, if, by the 75th day before the municipal election, no person has been appointed to office pursuant to paragraph (1) or (2), the election shall be held.

(b) Subdivision (a) shall not apply if, at the regularly scheduled municipal election, more than one person has been nominated to another city office to be elected on a citywide basis or, a city measure has qualified and is to be submitted to the voters at that municipal election.

(c) Notwithstanding Chapter 1 (commencing with Section 8600) of Part 3 of Division 8, or any other provision of the law to the contrary, if the governing body of a city makes an appointment pursuant to subdivision (a), the elections official shall not accept for filing any statement of write-in candidacy that is submitted after the appointment is made.

(d) Nothing in this section shall be construed to prevent a city from enacting an ordinance pursuant to Section 36512 of the Government Code, requiring that a special election be held, or from enacting an ordinance pursuant to Section 36512 of the Government Code, providing that a person appointed to fill a vacancy on the city council shall hold office only until the date of the special election, or both. Any ordinance or ordinances may allow for appointment consistent with subdivision (a) without requiring or providing for a special election.

In the event that an appointment to office is made in a particular legislative district pursuant to subdivision (a), that appointment shall not affect the conduct of the municipal election in other legislative districts of the city.

SEC. 36. Section 10411 of the Elections Code is amended to read:

10411. In case of the consolidation of any election called by the legislative body of a city, district or other political subdivision with an election held in the county or counties in which the city, district or other political subdivision is situated, the governing body of the city, district or other political subdivision may authorize the board of supervisors to canvass the returns of the election. If this authority is given:

(a) The election shall be held in all respects as if there were only one election.

(b) Only one form of ballot shall be used.

(c) The returns of the election need not be canvassed by the legislative body of the authorizing city, district or other political subdivision.

If such authority is given to the board of supervisors, the canvass shall be made in accordance with Article 1 (commencing with Section 15050) of Chapter 2 of Division 15.

SEC. 37. Section 10414 of the Elections Code is repealed.

SEC. 38. Section 10415 of the Elections Code is repealed.

SEC. 39. Section 10512 of the Elections Code is amended to read:

10512. Each candidate shall set forth in full the oath or affirmation set forth in Section 3 of Article XX of the California Constitution, which shall be filed with the declaration of candidacy. The county elections official or district secretary, or a person designated by the county elections official or district secretary, shall administer the oath.

SEC. 40. Section 10706 of the Elections Code is amended to read:

10706. (a) If no candidate receives a majority of votes cast, the name of that candidate of each qualified political party who receives the most votes cast for all candidates of that party shall be placed on the special general election ballot as the candidate of that party. The name of a write-in candidate shall not be placed on the ballot unless he or she also meets the requirements of subdivision (a) of Section 8605.

(b) In addition to the candidates referred to in subdivision (a), each candidate who has qualified for the ballot by reason of the independent nomination procedure pursuant to Part 2 (commencing with Section 8300) of Division 8 shall be placed on the special general election ballot as an independent candidate. However, if two or more of these candidates are recorded on their affidavits of registration as being affiliated with the same political body, only the candidate with the greatest number of votes shall be placed on the special general election ballot.

SEC. 41. Section 12302 of the Elections Code is amended to read:

12302. (a) Except as provided in subdivision (b), each member of a precinct board shall be a voter of the county, except that county employees used as poll workers may reside outside of the county. The member shall serve only in the precinct for which appointment is received.

(b) In order to provide for a greater awareness of the elections process, the rights and responsibilities of voters and the importance of participating in the electoral process, as well as to provide additional members of precinct boards, an elections official may appoint not more than two students per precinct to serve under the direct supervision of precinct board members designated by the elections official. A student may be appointed, notwithstanding lack of eligibility to vote, subject to the approval of the board of the educational institution in which the student is enrolled, if the student possesses the following qualifications:

(1) Is at least 16 years of age at the time of the election to which he or she is serving as a member of a precinct board.

(2) Is a United States citizen or will be a citizen at the time of the election to which he or she is serving as a member of a precinct board.

(3) Is a student in good standing attending a public or private secondary educational institution.

(4) Is a senior and has a grade point average of at least 2.5 on a 4.0 scale.

(c) No student appointed pursuant to subdivision (b) shall be used by a precinct board to tally votes.

SEC. 42. Section 13003 of the Elections Code is repealed.

SEC. 43. Section 13201 of the Elections Code is amended to read:

13201. The ballots of each political party's central committee shall be designed so that each ballot may be easily and clearly distinguished from, and not confused with, a ballot of any other political party.

SEC. 44. Section 15273 of the Elections Code is repealed.

SEC. 45. Section 15278 is added to the Elections Code, to read:

15278. On completion of the canvass of the returns for each election, the elections official shall compare the absent voters list with the roster of voters in each precinct to determine if any voter cast more than one ballot at that election.

SEC. 46. Section 15310 of the Elections Code is amended to read:

15310. The elections official shall send to the Secretary of State within 35 days of the election by registered mail one complete copy of all returns as to:

(a) All candidates voted for statewide office.

(b) All candidates voted for the following offices:

(1) Member of the Assembly.

(2) Member of the Senate.

(3) Representative in Congress.

(4) Member of the State Board of Equalization.

(5) Supreme Court Justice or Justice of the Court of Appeal.

(6) Judge of the superior court.

(7) Judge of the municipal court.

(c) All persons voted for at the presidential primary. The returns for all persons voted for at the presidential primary for delegates to

national conventions shall be canvassed first and shall be sent separately within 20 days after the election.

(d) At presidential elections, the vote given for persons for electors of President and Vice President of the United States. The returns for presidential electors shall be endorsed "Presidential Election Returns," and sent so that they are received by the Secretary of State not later than the first Monday in the month following the election.

(e) All statewide measures.

This section shall become operative on January 1, 1996.

SEC. 47. Section 15501 of the Elections Code is amended to read:

15501. (a) Except as to presidential electors, the Secretary of State shall compile the returns for:

(1) All candidates for statewide office.

(2) All candidates for Assembly, State Senate, Congress, State Board of Equalization, Supreme Court, and Courts of Appeal.

(3) All statewide measures.

(b) The Secretary of State shall make out, certify, and file a statement of the vote from the compiled returns no later than the 39th day after the election.

(c) The Secretary of State may gather returns for local elections, including, but not limited to, the following:

(1) Candidates for county office.

(2) Candidates for city office.

(3) Candidates for school and district office.

(4) County ballot measures.

(5) City ballot measures.

(6) School and district ballot measures.

SEC. 48. Section 15628 of the Elections Code is amended to read:

15628. Not less than one day prior to commencement of the recount, the elections official shall post a notice as to the date and place of the recount and shall notify the following persons of it in person or by any federally regulated overnight mail service:

(a) All candidates for any office the votes for which are to be recounted.

(b) Authorized representatives of presidential candidates to whom electors are pledged if the votes to be recounted were cast for presidential electors.

(c) Proponents of any initiative or referendum or persons filing ballot arguments for or against any initiative, referendum, or measure placed on the ballot by the governing body the votes for which are to be recounted.

(d) The Secretary of State in the case of a recount of the votes cast for candidates for any state office, presidential electors, the House of Representatives of the United States, the Senate of the United States, or delegates to a national convention or on any state measure.

SEC. 49. Section 15651 of the Elections Code is amended to read:

15651. (a) If at any election, except as provided in subdivision (b) and an election for Governor or Lieutenant Governor, two or more persons receive an equal and the highest number of votes for an office to be voted for in more than one county, the Secretary of State shall forthwith summon the candidates who have received the tie votes, whether upon the canvass of the returns by the Secretary of State or upon recount by a court, to appear before him or her at the Secretary of State's office at the State Capitol at a time to be designated by him or her. The Secretary of State shall at that time and place determine the tie by lot. Except as provided in subdivision (b), in the same manner, at a time and place designated by it, the election board shall determine a tie vote, whether upon the canvass of the returns by the election board or upon a recount by a court, for candidates voted for wholly within one county or city.

(b) In lieu of resolving a tie vote by lot as provided in subdivision (a), the legislative body of any county, city, or special district not subject to the Uniform District Election Law (Part 4 (commencing with Section 10500) of Division 10) may resolve a tie vote by the conduct of a special runoff election involving those candidates who received an equal number of votes and the highest number of votes.

A special runoff election shall be held only if the legislative body adopts the provisions of this subdivision prior to the conduct of the election resulting in the tie vote. If a legislative body decides to call a special runoff election in the event of a tie vote, all future elections conducted by that body shall be resolved by the conduct of a special runoff election, unless the legislative body later repeals the authority for the conduct of a special runoff election.

If a special runoff election is held pursuant to this subdivision, the legislative body shall call for the runoff election to be held in the local entity on a Tuesday not less than 40 nor more than 125 days after the administrative or judicial certification of the election that resulted in a tie vote. If a regular election is to be held throughout the jurisdiction within that time period, the special runoff election shall be held on the same day as, and consolidated with, the regular election.

SEC. 50. Section 6254.4 of the Government Code is amended to read:

6254.4. (a) The home address, telephone number, precinct number, or other number specified by the Secretary of State for voter registration purposes, and prior registration information shown on the voter registration card for all registered voters is confidential, and shall not be disclosed to any person, except pursuant to Sections 2194 and 2194.5 of the Elections Code.

(b) For purposes of this section, "home address" means street address only, and does not include an individual's city or post office address.

(c) The California driver's license number or California identification card number shown on a voter registration card of a

registered voter is confidential and shall not be disclosed to any person.

SEC. 51. 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, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 200

An act to amend Sections 581c and 1008 of the Code of Civil Procedure, relating to civil actions.

[Approved by Governor July 20, 1998. Filed with Secretary of State July 21, 1998.]

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

SECTION 1. Section 581c of the Code of Civil Procedure is amended to read:

581c. (a) Only after, and not before, the plaintiff has completed his or her opening statement, or after the presentation of his or her evidence in a trial by jury, the defendant, without waiving his or her right to offer evidence in the event the motion is not granted, may move for a judgment of nonsuit.

(b) If it appears that the evidence presented, or to be presented, supports the granting of the motion as to some but not all of the issues involved in the action, the court shall grant the motion as to those issues and the action shall proceed as to the issues remaining. Despite the granting of the motion, no final judgment shall be entered prior to the termination of the action, but the final judgment in the action shall, in addition to any matters determined in the trial, award judgment as determined by the motion herein provided for.

(c) If the motion is granted, unless the court in its order for judgment otherwise specifies, the judgment of nonsuit operates as an adjudication upon the merits.

(d) In actions which arise out of an injury to the person or to property, when a motion for judgment of nonsuit was granted on the basis that the defendant was without fault, no other defendant during trial, over plaintiff's objection, may attempt to attribute fault to or

comment on the absence or involvement of the defendant who was granted the motion.

SEC. 2. Section 1008 of the Code of Civil Procedure is amended to read:

1008. (a) When an application for an order has been made to a judge, or to a court, and refused in whole or in part, or granted, or granted conditionally, or on terms, any party affected by the order may, within 10 days after service upon the party of written notice of entry of the order and based upon new or different facts, circumstances, or law, make application to the same judge or court that made the order, to reconsider the matter and modify, amend, or revoke the prior order. The party making the application shall state by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown.

(b) A party who originally made an application for an order which was refused in whole or part, or granted conditionally or on terms, may make a subsequent application for the same order upon new or different facts, circumstances, or law, in which case it shall be shown by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown. For a failure to comply with this subdivision, any order made on a subsequent application may be revoked or set aside on ex parte motion.

(c) If a court at any time determines that there has been a change of law that warrants it to reconsider a prior order it entered, it may do so on its own motion and enter a different order.

(d) A violation of this section may be punished as a contempt and with sanctions as allowed by Section 128.7. In addition, an order made contrary to this section may be revoked by the judge or commissioner who made it, or vacated by a judge of the court in which the action or proceeding is pending.

(e) This section specifies the court's jurisdiction with regard to applications for reconsideration of its orders and renewals of previous motions, and applies to all applications to reconsider any order of a judge or court, or for the renewal of a previous motion, whether the order deciding the previous matter or motion is interim or final. No application to reconsider any order or for the renewal of a previous motion may be considered by any judge or court unless made according to this section.

(f) For the purposes of this section, an alleged new or different law shall not include a later enacted statute without a retroactive application.

(g) This section applies to all applications for interim orders.

SEC. 3. The amendments made to Section 581c of the Code of Civil Procedure pursuant to Section 1 of this act are not intended to affect any right of a defendant under statute or case law to move for

a judgment of nonsuit upon completion of the opening statement of the plaintiff against whom the motion is made.

CHAPTER 201

An act to amend Sections 1202.4 and 1203.1 of the Penal Code, relating to restitution.

[Approved by Governor July 20, 1998. Filed with Secretary of State July 21, 1998.]

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

SECTION 1. Section 1202.4 of the Penal Code is amended to read:

1202.4. (a) (1) It is the intent of the Legislature that a victim of crime who incurs any economic loss as a result of the commission of a crime shall receive restitution directly from any defendant convicted of that crime.

(2) Upon a person being convicted of any crime in the State of California, the court shall order the defendant to pay a fine in the form of a penalty assessment in accordance with Section 1464.

(3) The court, in addition to any other penalty provided or imposed under the law, shall order the defendant to pay both of the following:

(A) A restitution fine in accordance with subdivision (b).

(B) Restitution to the victim or victims, if any, in accordance with subdivision (f), which shall be enforceable as if the order were a civil judgment.

(b) In every case where a person is convicted of a crime, the court shall impose a separate and additional restitution fine, unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record.

(1) The restitution fine shall be set at the discretion of the court and commensurate with the seriousness of the offense, but shall not be less than two hundred dollars ($200), and not more than ten thousand dollars ($10,000), if the person is convicted of a felony, and shall not be less than one hundred dollars ($100), and not more than one thousand dollars ($1,000), if the person is convicted of a misdemeanor.

(2) In setting a felony restitution fine, the court may determine the amount of the fine as the product of two hundred dollars ($200) multiplied by the number of years of imprisonment the defendant is ordered to serve, multiplied by the number of felony counts of which the defendant is convicted.

(c) The court shall impose the restitution fine unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record. A defendant's inability to pay shall not

be considered a compelling and extraordinary reason not to impose a restitution fine. Inability to pay may be considered only in increasing the amount of the restitution fine in excess of the two-hundred-dollar ($200) or one-hundred-dollar ($100) minimum.

(d) In setting the amount of the fine pursuant to subdivision (b) in excess of the two-hundred-dollar ($200) or one-hundred-dollar ($100) minimum, the court shall consider any relevant factors including, but not limited to, the defendant's inability to pay, the seriousness and gravity of the offense and the circumstances of its commission, any economic gain derived by the defendant as a result of the crime, the extent to which any other person suffered any losses as a result of the crime, and the number of victims involved in the crime. Those losses may include pecuniary losses to the victim or his or her dependents as well as intangible losses, such as psychological harm caused by the crime. Consideration of a defendant's inability to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating his or her inability to pay. Express findings by the court as to the factors bearing on the amount of the fine shall not be required. A separate hearing for the fine shall not be required.

(e) The restitution fine shall not be subject to penalty assessments as provided in Section 1464, and shall be deposited in the Restitution Fund in the State Treasury.

(f) In every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court. If the amount of loss cannot be ascertained at the time of sentencing, the restitution order shall include a provision that the amount shall be determined at the direction of the court. The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states them on the record.

(1) The defendant has the right to a hearing before a judge to dispute the determination of the amount of restitution. The court may modify the amount, on its own motion or on the motion of the district attorney, the victim or victims, or the defendant. If a motion is made for modification of a restitution order, the victim shall be notified of that motion at least 10 days prior to the proceeding held to decide the motion.

(2) Determination of the amount of restitution ordered pursuant to this subdivision shall not be affected by the indemnification or subrogation rights of any third party. Restitution payments made pursuant to this subdivision shall be made to the Restitution Fund to the extent that the victim, as defined in subdivision (k), has received assistance pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code.

(3) To the extent possible, the restitution order shall be prepared by the sentencing court, shall identify each victim and each loss to which it pertains, and shall be of a dollar amount that is sufficient to fully reimburse the victim or victims for every determined economic loss incurred as the result of the defendant's criminal conduct, including, but not limited to, all of the following:

(A) Full or partial payment for the value of stolen or damaged property. The value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of repairing the property when repair is possible.

(B) Medical expenses.

(C) Wages or profits lost due to injury incurred by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, while caring for the injured minor.

(D) Wages or profits lost by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, due to time spent as a witness or in assisting the police or prosecution.

(E) Noneconomic losses, including, but not limited to, psychological harm, for felony violations of Section 288.

(F) Interest, at the rate of 10 percent per annum, that accrues as of the date of sentencing or loss, as determined by the court.

(G) Actual and reasonable attorney's fees and other costs of collection accrued by a private entity on behalf of the victim.

(g) The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record. A defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution order, nor shall inability to pay be a consideration in determining the amount of a restitution order.

(h) The district attorney may request an order of examination pursuant to the procedures specified in Article 2 (commencing with Section 708.110) of Chapter 6 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure, in order to determine the defendant's financial assets for purposes of collecting on the restitution order.

(i) A restitution order imposed pursuant to subdivision (f) shall be enforceable as if the order were a civil judgment.

(j) The making of a restitution order pursuant to subdivision (f) shall not affect the right of a victim to recovery from the Restitution Fund as otherwise provided by law, except to the extent that restitution is actually collected pursuant to the order. Restitution collected pursuant to this subdivision shall be credited to any other judgments for the same losses obtained against the defendant arising out of the crime for which the defendant was convicted.

(k) For purposes of this section, "victim" shall include the immediate surviving family of the actual victim. "Victim" shall also include any corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision,

agency, or instrumentality, or any other legal or commercial entity when that entity is a direct victim of a crime.

(*l*) At its discretion, the board of supervisors of any county may impose a fee to cover the actual administrative cost of collecting the restitution fine, not to exceed 10 percent of the amount ordered to be paid, to be added to the restitution fine and included in the order of the court, the proceeds of which shall be deposited in the general fund of the county.

(m) In every case in which the defendant is granted probation, the court shall make the payment of restitution fines and orders imposed pursuant to this section a condition of probation. Any portion of a restitution order that remains unsatisfied after a defendant is no longer on probation shall continue to be enforceable by a victim pursuant to Section 1214 until the obligation is satisfied.

(n) If the court finds and states on the record compelling and extraordinary reasons why a restitution fine or full restitution order should not be required, the court shall order, as a condition of probation, that the defendant perform specified community service, unless it finds and states on the record compelling and extraordinary reasons not to require community service in addition to the finding that restitution should not be required. Upon revocation of probation, the court shall impose restitution pursuant to this section.

(o) The provisions of Section 13966.01 of the Government Code shall apply to restitution imposed pursuant to this section.

SEC. 2. Section 1203.1 of the Penal Code is amended to read:

1203.1. (a) The court, or judge thereof, in the order granting probation, may suspend the imposing or the execution of the sentence and may direct that the suspension may continue for a period of time not exceeding the maximum possible term of the sentence, except as hereinafter set forth, and upon those terms and conditions as it shall determine. The court, or judge thereof, in the order granting probation and as a condition thereof, may imprison the defendant in a county jail for a period not exceeding the maximum time fixed by law in the case.

However, where the maximum possible term of the sentence is five years or less, then the period of suspension of imposition or execution of sentence may, in the discretion of the court, continue for not over five years. The following shall apply to this subdivision:

(1) The court may fine the defendant in a sum not to exceed the maximum fine provided by law in the case.

(2) The court may, in connection with granting probation, impose either imprisonment in a county jail or a fine, both, or neither.

(3) The court shall provide for restitution in proper cases. The restitution order shall be fully enforceable as a civil judgment forthwith and in accordance with Section 1202.4 of the Penal Code.

(4) The court may require bonds for the faithful observance and performance of any or all of the conditions of probation.

(b) The court shall consider whether the defendant as a condition of probation shall make restitution to the victim or the Restitution Fund. Any restitution payment received by a probation department in the form of cash or money order shall be forwarded to the victim within 30 days from the date the payment is received by the department. Any restitution payment received by a probation department in the form of a check or draft shall be forwarded to the victim within 45 days from the date the payment is received by the department, provided, that payment need not be forwarded to a victim until 180 days from the date the first payment is received, if the restitution payments for that victim received by the probation department total less than fifty dollars ($50). In cases where the court has ordered the defendant to pay restitution to multiple victims and where the administrative cost of disbursing restitution payments to multiple victims involves a significant cost, any restitution payment received by a probation department shall be forwarded to multiple victims when it is cost-effective to do so, but in no event shall restitution disbursements be delayed beyond 180 days from the date the payment is received by the probation department.

(c) In counties or cities and counties where road camps, farms, or other public work is available the court may place the probationer in the road camp, farm, or other public work instead of in jail. In this case, Section 25359 of the Government Code shall apply to probation and the court shall have the same power to require adult probationers to work, as prisoners confined in the county jail are required to work, at public work. Each county board of supervisors may fix the scale of compensation of the adult probationers in that county.

(d) In all cases of probation the court may require as a condition of probation that the probationer go to work and earn money for the support of his or her dependents or to pay any fine imposed or reparation condition, to keep an account of his or her earnings, to report them to the probation officer and apply those earnings as directed by the court.

(e) The court shall also consider whether the defendant as a condition of probation shall make restitution to a public agency for the costs of an emergency response pursuant to Article 8 (commencing with Section 53150) of Chapter 1 of Part 1 of Division 2 of the Government Code.

(f) In all cases in which, as a condition of probation, a judge of the superior court sitting by authority of law elsewhere than at the county seat requires a convicted person to serve his or her sentence at intermittent periods the sentence may be served on the order of the judge at the city jail nearest to the place at which the court is sitting, and the cost of his or her maintenance shall be a county charge.

(g) (1) The court and prosecuting attorney shall consider whether any defendant who has been convicted of a nonviolent or

nonserious offense and ordered to participate in community service as a condition of probation shall be required to engage in the removal of graffiti in the performance of the community service. For the purpose of this subdivision, a nonserious offense shall not include the following:

(A) Offenses in violation of the Dangerous Weapons' Control Law (Chapter 1 (commencing with Section 12000) of Title 2 of Part 4).

(B) Offenses involving the use of a dangerous or deadly weapon, including all violations of Section 417.

(C) Offenses involving the use or attempted use of violence against the person of another or involving injury to a victim.

(D) Offenses involving annoying or molesting children.

(2) Notwithstanding subparagraph (A) of paragraph (1), any person who violates Section 12101 shall be ordered to perform not less than 100 hours and not more than 500 hours of community service as a condition of probation.

(3) The court and the prosecuting attorney need not consider a defendant pursuant to paragraph (1) if the following circumstances exist:

(A) The defendant was convicted of any offense set forth in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.

(B) The judge believes that the public safety may be endangered if the person is ordered to do community service or the judge believes that the facts or circumstances or facts and circumstances call for imposition of a more substantial penalty.

(h) The probation officer or his or her designated representative shall consider whether any defendant who has been convicted of a nonviolent and nonserious offense and ordered to participate in community service as a condition of probation shall be required to engage in the performance of house repairs or yard services for senior citizens and the performance of repairs to senior centers through contact with local senior service organizations in the performance of the community service.

(i) Upon conviction of any offense involving child abuse or neglect, the court may require, in addition to any or all of the above-mentioned terms of imprisonment, fine, and other reasonable conditions, that the defendant shall participate in counseling or education programs, or both, including, but not limited to, parent education or parenting programs operated by community colleges, school districts, other public agencies, or private agencies.

(j) The court may impose and require any or all of the above-mentioned terms of imprisonment, fine, and conditions, and other reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from that breach, and generally and specifically for the reformation and rehabilitation of the probationer, and that should the probationer violate any of the terms or conditions imposed by the

court in the matter, it shall have authority to modify and change any and all the terms and conditions and to reimprison the probationer in the county jail within the limitations of the penalty of the public offense involved. Upon the defendant being released from the county jail under the terms of probation as originally granted or any modification subsequently made, and in all cases where confinement in a county jail has not been a condition of the grant of probation, the court shall place the defendant or probationer in and under the charge of the probation officer of the court, for the period or term fixed for probation. However, upon the payment of any fine imposed and the fulfillment of all conditions of probation, probation shall cease at the end of the term of probation, or sooner, in the event of modification. In counties and cities and counties in which there are facilities for taking fingerprints, those of each probationer shall be taken and a record of them kept and preserved.

(k) Notwithstanding any other provisions of law to the contrary, except as provided in Section 13967, as operative on or before September 28, 1994, of the Government Code and Section 13967.5 of the Government Code and Sections 1202.4, 1463.16, paragraph (1) of subdivision (a) of Section 1463.18, and Section 1464, and Section 1203.04, as operative on or before August 2, 1995, all fines collected by a county probation officer in any of the courts of this state, as a condition of the granting of probation or as a part of the terms of probation, shall be paid into the county treasury and placed in the general fund for the use and benefit of the county.

(*l*) If the court orders restitution to be made to the victim, the board of supervisors may add a fee to cover the actual administrative cost of collecting restitution but not to exceed 10 percent of the total amount ordered to be paid. The fees shall be paid into the general fund of the county treasury for the use and benefit of the county.

CHAPTER 202

An act to amend Section 41862 of the Education Code, relating to school finance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 20, 1998. Filed with Secretary of State July 21, 1998.]

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

SECTION 1. Section 41862 of the Education Code is amended to read:

41862. School districts that meet all of the following criteria are eligible to receive an apportionment pursuant to this article:

(a) The number of pupils who received home-to-school transportation services in the prior fiscal year was equivalent to at least 33 percent of the total number of units of average daily attendance in the prior fiscal year.

(b) The total cost per mile for the prior fiscal year for home-to-school transportation does not exceed the statewide average cost per mile, or if the total cost per mile for the prior fiscal year for home-to-school transportation exceeds the statewide average cost per mile, the school district demonstrates to the satisfaction of the Superintendent of Public Instruction that the increased cost per mile is due to either weather-related or terrain-related conditions. The Superintendent of Public Instruction shall determine that the increased cost per mile is due to weather-related or terrain-related conditions if those conditions meet any of the following criteria:

(1) Snow and ice create roadway and safety problems.

(2) Fifty percent or more of publicly maintained roads in the school district are considered to be curves.

(3) There are changes in elevation of 2,000 feet or more on publicly maintained roads in the school district.

(c) In the prior fiscal year, the amount of the school district's approved cost of home-to-school transportation per unit of average daily attendance exceeded one hundred thirty dollars ($130).

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

In order to ensure that school districts that experience unavoidable increased costs for home-to-school transportation as outlined in Section 1 of this act may immediately receive the increased funding made available by this act, it is necessary that this act take effect immediately.

CHAPTER 203

An act to amend Sections 3068.1, 3071, 3072, 3073, and 3074 of the Civil Code, and to amend Sections 22670 and 22851.12 of the Vehicle Code, relating to vehicles.

[Approved by Governor July 20, 1998. Filed with Secretary of State July 21, 1998.]

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

SECTION 1. Section 3068.1 of the Civil Code is amended to read:

3068.1. (a) Every person has a lien dependent upon possession for the compensation to which the person is legally entitled for towing, storage, or labor associated with recovery or load salvage of

any vehicle subject to registration that has been authorized to be removed by a public agency, a private property owner pursuant to Section 22658 of the Vehicle Code, or a lessee, operator, or registered owner of the vehicle. The lien is deemed to arise on the date of possession of the vehicle. Possession is deemed to arise when the vehicle is removed and is in transit, or when vehicle recovery operations or load salvage operations have begun. A person seeking to enforce a lien for the storage and safekeeping of a vehicle shall impose no charge exceeding that for one day of storage if, 24 hours or less after the vehicle is placed in storage, the vehicle is released. If the release is made more than 24 hours after the vehicle is placed in storage, charges may be imposed on a full, calendar-day basis for each day, or part thereof, that the vehicle is in storage. If a request to release the vehicle is made and the appropriate fees are tendered and documentation establishing that the person requesting release is entitled to possession of the vehicle, or is the owner's insurance representative, is presented within the initial 24 hours of storage, and the storage facility fails to comply with the request to release the vehicle or is not open for business during normal business hours, then only one day's charge may be required to be paid until after the first business day. A "business day" is any day in which the lienholder is open for business to the public for at least eight hours. If the request is made more than 24 hours after the vehicle is placed in storage, charges may be imposed on a full-calendar day basis for each day, or part thereof, that the vehicle is in storage.

(b) If the vehicle has been determined to have a value not exceeding four thousand dollars ($4,000), the lien shall be satisfied pursuant to Section 3072. Lien sale proceedings pursuant to Section 3072 shall commence within 15 days of the date the lien arises. No storage shall accrue beyond the 15-day period unless lien sale proceedings pursuant to Section 3072 have commenced. The storage lien may be for a period not exceeding 60 days if a completed notice of a pending lien sale form has been filed pursuant to Section 3072 within 15 days after the lien arises. Notwithstanding this 60-day limitation, the storage lien may be for a period not exceeding 120 days if any one of the following occurs:

(1) A Declaration of Opposition is filed with the department pursuant to Section 3072.

(2) The vehicle has an out-of-state registration.

(3) The vehicle identification number was altered or removed.

(4) A person who has an interest in the vehicle becomes known to the lienholder after the lienholder has complied with subdivision (b) of Section 3072.

(c) If the vehicle has been determined to have a value exceeding four thousand dollars ($4,000) pursuant to Section 22670 of the Vehicle Code, the lien shall be satisfied pursuant to Section 3071. The storage lien may be for a period not exceeding 120 days if an

application for an authorization to conduct a lien sale has been filed pursuant to Section 3071.

(d) Any lien under this section shall be extinguished, and no lien sale shall be conducted, if any one of the following occurs:

(1) The lienholder, after written demand to inspect the vehicle made by either personal service or certified mail with return receipt requested by the legal owner or the lessor, fails to permit the inspection by the legal owner or lessor, or his or her agent, within a period of time of at least 24 hours, but not to exceed 72 hours, after the receipt of that written demand, during the normal business hours of the lienholder. The legal owner or lessor shall comply with inspection and vehicle release policies of the impounding public agency.

(2) The amount claimed for storage exceeds the posted rates.

SEC. 2. Section 3071 of the Civil Code is amended to read:

3071. (a) A lienholder shall apply to the department for the issuance of an authorization to conduct a lien sale pursuant to this section for any vehicle with a value determined to be over four thousand dollars ($4,000). A filing fee shall be charged by the department and may be recovered by the lienholder if a lien sale is conducted or if the vehicle is redeemed. The application shall be executed under penalty of perjury and shall include all of the following information:

(1) A description of the vehicle, including make, year model, identification number, license number, and state of registration. For motorcycles, the engine number also shall be included. If the vehicle identification number is not available, the department shall request an inspection of the vehicle by a peace officer, licensed vehicle verifier, or departmental employee before accepting the application.

(2) The names and addresses of the registered and legal owners of the vehicle, if ascertainable from the registration certificates within the vehicle, and the name and address of any person whom the lienholder knows, or reasonably should know, claims an interest in the vehicle.

(3) A statement of the amount of the lien and the facts that give rise to the lien.

(b) Upon receipt of an application made pursuant to subdivision (a), the department shall do all of the following:

(1) Notify the vehicle registry agency of a foreign state of the pending lien sale, if the vehicle bears indicia of registration in that state.

(2) By certified mail, send a notice, a copy of the application, and a return envelope preaddressed to the department to the registered and legal owners at their addresses of record with the department, and to any other person whose name and address is listed in the application.

(c) The notice required pursuant to subdivision (b) shall include all of the following statements and information:

(1) An application has been made with the department for authorization to conduct a lien sale.

(2) The person has a right to a hearing in court.

(3) If a hearing in court is desired, a Declaration of Opposition form, signed under penalty of perjury, shall be signed and returned to the department within 10 days of the date that the notice required pursuant to subdivision (b) was mailed.

(4) If the Declaration of Opposition form is signed and returned to the department, the lienholder shall be allowed to sell the vehicle only if he or she obtains a court judgment , if he or she obtains a subsequent release from the declarant or if the declarant, cannot be served as described in subdivision (e).

(5) If a court action is filed, the declarant shall be notified of the lawsuit at the address shown on the Declaration of Opposition form and may appear to contest the claim.

(6) The person may be liable for court costs if a judgment is entered in favor of the lienholder.

(d) If the department receives the Declaration of Opposition form in the time specified, the department shall notify the lienholder within 16 days of the receipt of the form that a lien sale shall not be conducted unless the lienholder files an action in court within 30 days of the department's notice under this subdivision. A lien sale of the vehicle shall not be conducted unless judgment is subsequently entered in favor of the lienholder or the declarant subsequently releases his or her interest in the vehicle. If a money judgment is entered in favor of the lienholder and the judgment is not paid within five days after becoming final, then the judgment may be enforced by lien sale proceedings conducted pursuant to subdivision (f).

(e) Service on the declarant in person or by certified mail with return receipt requested, signed by the declarant or an authorized agent of the declarant at the address shown on the Declaration of Opposition form, shall be effective for the serving of process. If the lienholder has served the declarant by certified mail at the address shown on the Declaration of Opposition form and the mail has been returned unclaimed, or if the lienholder has attempted to effect service on the declarant in person with a marshal, sheriff, or licensed process server and the marshal, sheriff, or licensed process server has been unable to effect service on the declarant, the lienholder may proceed with the judicial proceeding or proceed with the lien sale without a judicial proceeding. The lienholder shall notify the department of the inability to effect service on the declarant and shall provide the department with a copy of the documents with which service on the declarant was attempted. Upon receipt of the notification of unsuccessful service, the department shall send authorization of the sale to the lienholder and send notification of the authorization to the declarant.

(f) Upon receipt of authorization to conduct the lien sale from the department, the lienholder shall immediately do all of the following:

(1) At least five days, but not more than 20 days, prior to the lien sale, not counting the day of the sale, give notice of the sale by advertising once in a newspaper of general circulation published in the county in which the vehicle is located. If there is no newspaper published in the county, notice shall be given by posting a Notice of Sale form in three of the most public places in the town in which the vehicle is located and at the place where the vehicle is to be sold for 10 consecutive days prior to and including the day of the sale.

(2) Send a Notice of Pending Lien Sale form 20 days prior to the sale but not counting the day of sale, by certified mail with return receipt requested, to each of the following:

(A) The registered and legal owners of the vehicle, if registered in this state.

(B) All persons known to have an interest in the vehicle.

(C) The department.

(g) All notices required by this section, including the notice forms prescribed by the department, shall specify the make, year model, vehicle identification number, license number, and state of registration, if available, and the specific date, exact time, and place of sale. For motorcycles, the engine number shall also be included.

(h) No lien sale shall be undertaken pursuant to this section unless the vehicle has been available for inspection at a location easily accessible to the public for at least one hour before the sale and is at the place of sale at the time and date specified on the notice of sale. Sealed bids shall not be accepted. The lienholder shall conduct the sale in a commercially reasonable manner.

(i) Within 10 days after the sale of any vehicle pursuant to this section, the legal or registered owner may redeem the vehicle upon the payment of the amount of the sale, all costs and expenses of the sale, together with interest on the sum at the rate of 12 percent per annum from the due date thereof or the date when that sum was advanced until the repayment. If the vehicle is not redeemed, all lien sale documents required by the department shall then be completed and delivered to the buyer.

(j) Any lien sale pursuant to this section shall be void if the lienholder does not comply with this chapter. Any lien for fees or storage charges for parking and storage of a motor vehicle shall be subject to Section 10652.5 of the Vehicle Code.

SEC. 3. Section 3072 of the Civil Code is amended to read:

3072. (a) For vehicles with a value determined to be four thousand dollars ($4,000) or less, the lienholder shall apply to the department for the names and addresses of the registered and legal owners of record. The request shall include a description of the vehicle, including make, year, model, identification number, license number, and state of registration. If the vehicle identification number is not available, the Department of Motor Vehicles shall request an inspection of the vehicle by a peace officer, licensed vehicle verifier, or departmental employee before releasing the

names and addresses of the registered and legal owners and interested parties.

(b) The lienholder shall, immediately upon receipt of the names and addresses, send, by certified mail with return receipt requested or by United States Postal Service Certificate of Mailing, a completed Notice of Pending Lien Sale form, a blank Declaration of Opposition form, and a return envelope preaddressed to the department, to the registered owner and legal owner at their addresses of record with the department, and to any other person known to have an interest in the vehicle. The lienholder shall additionally send a copy of the completed Notice of Pending Lien Sale form to the department by certified mail on the same day that the other notices are mailed pursuant to this subdivision.

(c) All notices to persons having an interest in the vehicle shall be signed under penalty of perjury and shall include all of the following information and statements:

(1) A description of the vehicle, including make, year model, identification number, license number, and state of registration. For motorcycles, the engine number shall also be included.

(2) The specific date, exact time, and place of sale, which shall be set not less than 31 days, but not more than 41 days, from the date of mailing.

(3) The names and addresses of the registered and legal owners of the vehicle and any other person known to have an interest in the vehicle.

(4) All of the following statements:

(A) The amount of the lien and the facts concerning the claim which gives rise to the lien.

(B) The person has a right to a hearing in court.

(C) If a court hearing is desired, a Declaration of Opposition form, signed under penalty of perjury, shall be signed and returned to the department within 10 days of the date the Notice of Pending Lien Sale form was mailed.

(D) If the Declaration of Opposition form is signed and returned, the lienholder shall be allowed to sell the vehicle only if he or she obtains a court judgment or if he or she obtains a subsequent release from the declarant or if the declarant cannot be served as described in subdivision (e).

(E) If a court action is filed, the declarant shall be notified of the lawsuit at the address shown on the Declaration of Opposition form and may appear to contest the claim.

(F) The person may be liable for court costs if a judgment is entered in favor of the lienholder.

(d) If the department receives the completed Declaration of Opposition form within the time specified, the department shall notify the lienholder within 16 days that a lien sale shall not be conducted unless the lienholder files an action in court within 30 days of the notice and judgment is subsequently entered in favor of the

lienholder or the declarant subsequently releases his or her interest in the vehicle. If a money judgment is entered in favor of the lienholder and the judgment is not paid within five days after becoming final, then the judgment may be enforced by lien sale proceedings conducted pursuant to subdivision (f).

(e) Service on the declarant in person or by certified mail with return receipt requested, signed by the declarant or an authorized agent of the declarant at the address shown on the Declaration of Opposition form, shall be effective for the serving of process. If the lienholder has served the declarant by certified mail at the address shown on the Declaration of Opposition form and the mail has been returned unclaimed, or if the lienholder has attempted to effect service on the declarant in person with a marshal, sheriff, or licensed process server and the marshal, sheriff, or licensed process server has been unable to effect service on the declarant, the lienholder may proceed with the judicial proceeding or proceed with the lien sale without a judicial proceeding. The lienholder shall notify the Department of Motor Vehicles of the inability to effect service on the declarant and shall provide the Department of Motor Vehicles with a copy of the documents with which service on the declarant was attempted. Upon receipt of the notification of unsuccessful service, the Department of Motor Vehicles shall send authorization of the sale to the lienholder and shall send notification of the authorization to the declarant.

(f) At least 10 consecutive days prior to and including the day of the sale, the lienholder shall post a Notice of Pending Lien Sale form in a conspicuous place on the premises of the business office of the lienholder and if the pending lien sale is scheduled to occur at a place other than the premises of the business office of the lienholder, at the site of the forthcoming sale. The Notice of Pending Lien Sale form shall state the specific date and exact time of the sale and description of the vehicle, including the make, year model, identification number, license number, and state of registration. For motorcycles, the engine number shall also be included. The notice of sale shall remain posted until the sale is completed.

(g) No lien sale shall be undertaken pursuant to this section unless the vehicle has been available for inspection at a location easily accessible to the public at least one hour before the sale and is at the place of sale at the time and date specified on the notice of sale. Sealed bids shall not be accepted. The lienholder shall conduct the sale in a commercially reasonable manner. All lien sale documents required by the department shall be completed and delivered to the buyer immediately following the sale.

(h) Any lien sale pursuant to this section shall be void if the lienholder does not comply with this chapter. Any lien for fees or storage charges for parking and storage of a motor vehicle shall be subject to Section 10652.2 of the Vehicle Code.

SEC. 4. Section 3073 of the Civil Code is amended to read:

3073. The proceeds of a vehicle lien sale under this article shall be disposed of as follows:

(a) The amount necessary to discharge the lien and the cost of processing the vehicle shall be paid to the lienholder. The cost of processing shall not exceed seventy dollars ($70) for each vehicle valued at four thousand dollars ($4,000) or less, or one hundred dollars ($100) for each vehicle valued over four thousand dollars ($4,000).

(b) The balance, if any, shall be forwarded to the Department of Motor Vehicles within 15 days of any sale conducted pursuant to Section 3071 or within five days of any sale conducted pursuant to Section 3072 and deposited in the Motor Vehicle Account in the State Transportation Fund, unless federal law requires these funds to be disposed in a different manner.

(c) Any person claiming an interest in the vehicle may file a claim with the Department of Motor Vehicles for any portion of the funds from the lien sale that were forwarded to the department pursuant to subdivision (b). Upon a determination of the Department of Motor Vehicles that the claimant is entitled to an amount from the balance deposited with the department, the department shall pay that amount determined by the department, which amount shall not exceed the amount forwarded to the department pursuant to subdivision (b) in connection with the sale of the vehicle in which the claimant claims an interest. The department shall not honor any claim unless the claim has been filed within three years of the date the funds were deposited in the Motor Vehicle Account.

SEC. 5. Section 3074 of the Civil Code is amended to read:

3074. The lienholder may charge a fee for lien sale preparations not to exceed seventy dollars ($70) in the case of a vehicle having a value determined to be four thousand dollars ($4,000) or less and not to exceed one hundred dollars ($100) in the case of a vehicle having a value determined to be greater than four thousand dollars ($4,000), from any person who redeems the vehicle prior to disposal or is paid through a lien sale pursuant to this chapter. These charges may commence and become part of the possessory lien when the lienholder requests the names and addresses of all persons having an interest in the vehicle from the Department of Motor Vehicles. Not more than 50 percent of the allowable fee may be charged until the lien sale notifications are mailed to all interested parties and the lienholder or registration service agent has possession of the required lien processing documents. This charge shall not be made in the case of any vehicle redeemed prior to 72 hours from the initial storage.

SEC. 6. Section 22670 of the Vehicle Code is amended to read:

22670. For lien sale purposes, the public agency causing the removal of the vehicle shall determine if the estimated value of the vehicle that has been ordered removed, towed, or stored is three hundred dollars ($300) or less, over three hundred dollars ($300) but

four thousand dollars ($4,000) or less, or over four thousand dollars ($4,000).

If the public agency fails or refuses to put a value on, or to estimate the value of, the vehicle within three days after the date of removal of the vehicle, the garage keeper specified in Section 22851 or the garage keeper's agent shall determine, under penalty of perjury, if the estimated value of the vehicle that has been ordered removed, towed, or stored, is three hundred dollars ($300) or less, over three hundred dollars ($300) but four thousand dollars ($4,000) or less, or over four thousand dollars ($4,000).

SEC. 7. Section 22851.12 of the Vehicle Code is amended to read:

22851.12. The lienholder may charge a fee for lien-sale preparations not to exceed seventy dollars ($70) in the case of a vehicle having a value determined to be four thousand dollars ($4,000) or less and not to exceed one hundred dollars ($100) in the case of a vehicle having a value determined to be greater than four thousand dollars ($4,000), from any person who redeems the vehicle prior to disposal or is sold through a lien sale pursuant to this chapter. These charges may commence and become part of the possessory lien when the lienholder requests the names and addresses of all persons having an interest in the vehicle from the department. Not more than 50 percent of the allowable fee may be charged until the lien sale notifications are mailed to all interested parties and the lienholder or the registration service agent has possession of the required lien processing documents. This charge shall not be made in the case of any vehicle redeemed prior to 72 hours from the initial storage.

CHAPTER 204

An act to add Section 23398.5 to the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor July 20, 1998. Filed with Secretary of State July 21, 1998.]

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

SECTION 1. Section 23398.5 is added to the Business and Professions Code, to read:

23398.5. Any on-sale license, issued pursuant to this division that authorizes the sale of wine, also authorizes the sale of soju, an imported Korean alcoholic beverage that contains not more than 24 percent of alcohol by volume and is derived from agricultural products.

CHAPTER 205

An act to amend Section 12240 of the Business and Professions Code, and to amend Section 630 of the Harbors and Navigation Code, relating to marinas.

[Approved by Governor July 20, 1998. Filed with Secretary of State July 21, 1998.]

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) Except as otherwise provided in this section, the board of supervisors, by ordinance, may charge an annual device registration fee, not to exceed the county's total cost of actually inspecting or testing the devices as required by law, 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.

(b) Except as otherwise provided in this section, the device registration fee shall not exceed the amount prescribed in the Table of Maximum Annual Charges set forth in subdivision (f).

(c) 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.

(d) 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.

(e) 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.

(f) 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

(g) For marinas, mobilehome parks, recreational vehicle parks, and apartment complexes, where the owner of the marina, park, or complex owns and is responsible for the utility meters, the annual fee shall not exceed sixty dollars ($60) per marina, park, or complex, and

a fee of up to two dollars ($2) per device per space or apartment. Marinas, 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.

(h) For weighing devices, other than livestock and motor truck scales, with capacities of 20,000 pounds or greater, the registration fee shall be two hundred dollars ($200) per device.

(i) For motor truck scales, the registration fee shall be one hundred dollars ($100) per device.

(j) This section does not apply to farm milk tanks.

(k) A scale or device used in a certified farmers' market, as defined by Section 113745 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 California county sealer.

(*l*) For livestock scales with capacities of 20,000 pounds or more, the registration fee shall be one hundred dollars ($100) per device, except that the fee for not more than three devices at a single location shall be one hundred dollars ($100).

SEC. 2. Section 630 of the Harbors and Navigation Code is amended to read:

630. The operator of every privately or publicly owned marina or small craft harbor, or facilities in connection therewith, furnishing electrical power to slips or berths for use aboard any vessel, may provide facilities for submetering to measure the electrical power actually used by or aboard each vessel and may base charges therefor upon that use including the actual cost of inspection, testing, and registration of submeters that may be charged by any authority having jurisdiction thereof.

CHAPTER 206

An act to amend Section 701.8 of the Public Utilities Code, relating to electric restructuring.

[Approved by Governor July 20, 1998. Filed with Secretary of State July 21, 1998.]

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

SECTION 1. Section 701.8 of the Public Utilities Code is amended to read:

701.8. (a) To ensure that the commission regulated electric utilities do not operate their transmission and distribution monopolies in a manner that impedes the ability of the San Francisco Bay Area Rapid Transit District (BART District) to reduce its electricity cost through the purchase and delivery of preference

power, electrical corporations shall meet the requirements of this section.

(b) Any electric utility regulated by the commission that owns and operates transmission and distribution facilities that deliver electricity at one or more locations to the BART District's system shall, upon request by the BART District, and without discrimination or delay, use the same facilities to deliver preference power purchased from a federal power marketing agency or its successor.

(c) Where the BART District purchases electric power at more than one location, at any voltage, from an electric utility under tariffs regulated by the commission, the utility shall bill the BART District for usage as though all the electricity purchased at transmission level voltages were metered by a single meter at one location and all the electricity purchased at subtransmission voltages were metered by a single meter at one location, provided that any billing for demand charges would be based on the coincident demand of transmission and distribution metering.

(d) If, on or after January 1, 1996, the BART District leases or has agreed to lease, as special facilities, utility plants for the purpose of receiving power at transmission level voltages, an electric utility regulated by the commission may not terminate the lease without concurrence from the BART District.

(e) When the BART District elects to have delivered pursuant to subdivision (b), preference power purchased from a federal power marketing agency, or its successor, neither Sections 365 and 366, and any commission regulations, orders, or tariffs, that implement direct transactions, are applicable, nor is the BART District an electricity supplier. Neither the commission, nor any electric utility that delivers the federal power to the BART District, shall require that an electricity supplier be designated as a condition of the delivery of that power.

(f) The BART District may elect to obtain electric power from the following multiple sources at the same time:

(1) Electric power delivered pursuant to subdivision (b).

(2) Electric power supplied by one or more direct transactions.

(3) Electric power from any electric utility regulated by the commission that owns and operates transmission and distribution facilities that deliver electricity at one or more locations to the BART District's system.

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 that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 207

An act to add Section 13514.5 to the Penal Code, relating to crime prevention.

[Approved by Governor July 20, 1998. Filed with Secretary of State July 21, 1998.]

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

SECTION 1. Section 13514.5 is added to the Penal Code, to read:

13514.5. (a) The commission shall implement on or before July 1, 1999, a course or courses of instruction for the training of law enforcement officers in the handling of acts of civil disobedience and adopt guidelines that may be followed by police agencies in responding to acts of civil disobedience.

(b) The course of training for law enforcement officers shall include adequate consideration of all of the following subjects:

(1) Reasonable use of force.

(2) Dispute resolution.

(3) Nature and extent of civil disobedience, whether it be passive or active resistance.

(4) Media relations.

(5) Public and officer safety.

(6) Documentation, report writing, and evidence collection.

(7) Crowd control.

(c) (1) All law enforcement officers who have received their basic training before July 1, 1999, may participate in supplementary training on responding to acts of civil disobedience, as prescribed and certified by the commission.

(2) Law enforcement agencies are encouraged to include, as part of their advanced officer training program, periodic updates and training on responding to acts of civil disobedience. The commission shall assist these agencies where possible.

(d) (1) 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 expertise in responding to acts of civil disobedience. The groups and individuals shall include, but not be limited to, law enforcement agencies, police academy instructors, subject matter experts and members of the public. Different regional

interests such as rural, suburban, and urban interests may be represented by the participating parties.

(2) The commission, in consultation with the groups and individuals described in paragraph (1), shall review existing training programs to determine in what ways civil disobedience training may be included as part of ongoing programs.

(e) As used in this section, "law enforcement officer" means any peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3.

(f) It is the intent of the Legislature in enacting this section to provide law enforcement officers with additional training so as to control acts of civil disobedience with reasonable use of force and to ensure public and officer safety with minimum disruption to commerce and community affairs.

(g) It is also the intent of the Legislature in enacting this section that the guidelines to be developed by the commission should take into consideration the roles and responsibilities of all law enforcement officers responding to acts of civil disobedience.

CHAPTER 208

An act to amend Sections 1238 and 1466 of the Penal Code, relating to criminal procedure.

[Approved by Governor July 20, 1998. Filed with Secretary of State July 21, 1998.]

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

SECTION 1. Section 1238 of the Penal Code is amended to read:

1238. (a) An appeal may be taken by the people from any of the following:

(1) An order setting aside all or any portion of the indictment, information, or complaint.

(2) An order sustaining a demurrer to all or any portion of the indictment, accusation, or information.

(3) An order granting a new trial.

(4) An order arresting judgment.

(5) An order made after judgment, affecting the substantial rights of the people.

(6) An order modifying the verdict or finding by reducing the degree of the offense or the punishment imposed or modifying the offense to a lesser offense.

(7) An order dismissing a case prior to trial made upon motion of the court pursuant to Section 1385 whenever such order is based upon an order granting the defendant's motion to return or suppress

property or evidence made at a special hearing as provided in this code.

(8) An order or judgment dismissing or otherwise terminating all or any portion of the action including such an order or judgment after a verdict or finding of guilty or an order or judgment entered before the defendant has been placed in jeopardy or where the defendant has waived jeopardy.

(9) An order denying the motion of the people to reinstate the complaint or a portion thereof pursuant to Section 871.5.

(10) The imposition of an unlawful sentence, whether or not the court suspends the execution of the sentence, except that portion of a sentence imposing a prison term which is based upon a court's choice that a term of imprisonment (A) be the upper, middle, or lower term, unless the term selected is not set forth in an applicable statute, or (B) be consecutive or concurrent to another term of imprisonment, unless an applicable statute requires that the term be consecutive. As used in this paragraph, "unlawful sentence" means the imposition of a sentence not authorized by law or the imposition of a sentence based upon an unlawful order of the court which strikes or otherwise modifies the effect of an enhancement or prior conviction.

(b) If, pursuant to paragraph (8) of subdivision (a), the people prosecute an appeal to decision, or any review of such decision, it shall be binding upon them and they shall be prohibited from refiling the case which was appealed.

(c) When an appeal is taken pursuant to paragraph (7) of subdivision (a), the court may review the order granting the defendant's motion to return or suppress property or evidence made at a special hearing as provided in this code.

(d) Nothing contained in this section shall be construed to authorize an appeal from an order granting probation. Instead, the people may seek appellate review of any grant of probation, whether or not the court imposes sentence, by means of a petition for a writ of mandate or prohibition which is filed within 60 days after probation is granted. The review of any grant of probation shall include review of any order underlying the grant of probation.

SEC. 2. Section 1466 of the Penal Code is amended to read:

1466. (a) An appeal may be taken from a judgment or order of an inferior court, in an infraction or misdemeanor case, to the superior court of the county in which the inferior court is located, in the following cases:

(1) By the people:

(A) From an order recusing the district attorney or city attorney pursuant to Section 1424.

(B) From an order or judgment dismissing or otherwise terminating all or any portion of the action, including such an order or judgment, entered after a verdict or finding of guilty or a verdict

or judgment entered before the defendant has been placed in jeopardy or where the defendant has waived jeopardy.

(C) From an order sustaining demurrer to any portion of the complaint or pleading.

(D) From an order granting a new trial.

(E) From an order arresting judgment.

(F) From any order made after judgment affecting the substantial rights of the people.

(G) From the imposition of an unlawful sentence, whether or not the court suspends the execution of sentence. As used in this subparagraph, "unlawful sentence" means the imposition of a sentence not authorized by law or the imposition of a sentence based upon an unlawful order of the court that strikes or otherwise modifies the effect of an enhancement or prior conviction. A defendant shall have the right to counsel in the people's appeal of an unlawful sentence under the same circumstances that he or she would have a right to counsel under subdivision (a) of Section 1238.

(H) Nothing in this section shall be construed to authorize an appeal from an order granting probation. Instead, the people may seek appellate review of any grant of probation, whether or not the court imposes sentence, by means of a petition for a writ of mandate or prohibition that is filed within 60 days after probation is granted. The review of any grant of probation shall include review of any order underlying the grant of probation.

(2) By the defendant:

(A) From a final judgment of conviction. A sentence, an order granting probation, a conviction in a case in which before final judgment the defendant is committed for insanity or is given an indeterminate commitment as a mentally disordered sex offender, or the conviction of a defendant committed for controlled substance addiction shall be deemed to be a final judgment within the meaning of this section. Upon appeal from a final judgment or an order granting probation the court may review any order denying a motion for a new trial.

(B) From any order made after judgment affecting his or her substantial rights.

(b) An appeal from the judgment or appealable order of an inferior court in a felony case is to the court of appeal for the district in which the court is located.

CHAPTER 209

An act to amend Sections 987.2 and 989.7 of the Military and Veterans Code, relating to veterans, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 20, 1998. Filed with
Secretary of State July 21, 1998.]

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

SECTION 1. Section 987.2 of the Military and Veterans Code is amended to read:

987.2. The contract made between the department and the purchaser shall provide that the purchaser maintain the farm or home as the purchaser's place of residence and keep in good order and repair all buildings, fences, and other permanent improvements situated thereon, and that the purchaser, if required, insure and keep insured against fire or other hazards, all buildings, fences, other permanent improvements, or crops on the property, the loss, if any, under the insurance policies to be made payable to the department as its interest appears. Insurance shall be in the amount, with the insurance companies, and under the conditions specified by the department. The department shall make an annual report on or before September 1st of each year to the Legislature regarding any insurance coverage implemented or required by it. The report shall include, but not be limited to, the type of insurance coverage, its cost, the reason for requiring that coverage, loss-ratio information, and any changes in existing insurance coverage and the reason for those changes.

SEC. 2. Section 989.7 of the Military and Veterans Code is amended to read:

989.7. The department may purchase insurance against any risk, or portion of any risk, otherwise payable out of appropriated moneys in the fund. The department shall make an annual report on or before September 1st of each year to the Legislature regarding any insurance coverage implemented or required by it. The report shall include, but not be limited to, the type of insurance coverage, its cost, the reason for purchasing the insurance, and any changes in existing insurance coverage and the reason for those changes.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to extend the due date of certain reporting requirements of the Department of Veterans Affairs, it is necessary that this act take effect at the earliest possible date.

CHAPTER 210

An act to amend Sections 11126 and 11126.3 of the Government Code, relating to open meetings.

[Approved by Governor July 20, 1998. Filed with
Secretary of State July 21, 1998.]

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

SECTION 1. Section 11126 of the Government Code is amended to read:

11126. (a) (1) Nothing in this article shall be construed to prevent a state body from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, or dismissal of a public employee or to hear complaints or charges brought against that employee by another person or employee unless the employee requests a public hearing.

(2) As a condition to holding a closed session on the complaints or charges to consider disciplinary action or to consider dismissal, the employee shall be given written notice of his or her right to have a public hearing, rather than a closed session, and that notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding a regular or special meeting. If notice is not given, any disciplinary or other action taken against any employee at the closed session shall be null and void.

(3) The state body also may exclude from any public or closed session, during the examination of a witness, any or all other witnesses in the matter being investigated by the state body.

(4) Following the public hearing or closed session, the body may deliberate on the decision to be reached in a closed session.

(b) For the purposes of this section, "employee" shall not include any person who is elected to, or appointed to a public office by, any state body. However, officers of the California State University who receive compensation for their services, other than per diem and ordinary and necessary expenses, shall, when engaged in that capacity, be considered employees. Furthermore, for purposes of this section, the term employee shall include a person exempt from civil service pursuant to subdivision (e) of Section 4 of Article VII of the California Constitution.

(c) Nothing in this article shall be construed to do any of the following:

(1) Prevent state bodies that administer the licensing of persons engaging in businesses or professions from holding closed sessions to prepare, approve, grade, or administer examinations.

(2) Prevent an advisory body of a state body that administers the licensing of persons engaged in businesses or professions from conducting a closed session to discuss matters that the advisory body has found would constitute an unwarranted invasion of the privacy of an individual licensee or applicant if discussed in an open meeting, provided the advisory body does not include a quorum of the members of the state body it advises. Those matters may include

review of an applicant's qualifications for licensure and an inquiry specifically related to the state body's enforcement program concerning an individual licensee or applicant where the inquiry occurs prior to the filing of a civil, criminal, or administrative disciplinary action against the licensee or applicant by the state body.

(3) Prohibit a state body from holding a closed session to deliberate on a decision to be reached in a proceeding required to be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 or similar provisions of law.

(4) Grant a right to enter any correctional institution or the grounds of a correctional institution where that right is not otherwise granted by law, nor shall anything in this article be construed to prevent a state body from holding a closed session when considering and acting upon the determination of a term, parole, or release of any individual or other disposition of an individual case, or if public disclosure of the subjects under discussion or consideration is expressly prohibited by statute.

(5) Prevent any closed session to consider the conferring of honorary degrees, or gifts, donations, and bequests that the donor or proposed donor has requested in writing to be kept confidential.

(6) Prevent the Alcoholic Beverage Control Appeals Board from holding a closed session for the purpose of holding a deliberative conference as provided in Section 11125.

(7) (A) Prevent a state body from holding closed sessions with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the state body to give instructions to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

(B) However, prior to the closed session, the state body shall hold an open and public session in which it identifies the real property or real properties that the negotiations may concern and the person or persons with whom its negotiator may negotiate.

(C) For purposes of this paragraph, the negotiator may be a member of the state body.

(D) For purposes of this paragraph, "lease" includes renewal or renegotiation of a lease.

(E) Nothing in this paragraph shall preclude a state body from holding a closed session for discussions regarding eminent domain proceedings pursuant to subdivision (e).

(8) Prevent the California Postsecondary Education Commission from holding closed sessions to consider matters pertaining to the appointment or termination of the Director of the California Postsecondary Education Commission.

(9) Prevent the Council for Private Postsecondary and Vocational Education from holding closed sessions to consider matters pertaining to the appointment or termination of the Executive Director of the Council for Private Postsecondary and Vocational Education.

(10) Prevent the Franchise Tax Board from holding closed sessions for the purpose of discussion of confidential tax returns or information the public disclosure of which is prohibited by law, or from considering matters pertaining to the appointment or removal of the Executive Officer of the Franchise Tax Board.

(11) Require the Franchise Tax Board to notice or disclose any confidential tax information considered in closed sessions, or documents executed in connection therewith, the public disclosure of which is prohibited pursuant to Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2 of the Revenue and Taxation Code.

(12) Prevent the Board of Corrections from holding closed sessions when considering reports of crime conditions under Section 6027 of the Penal Code.

(13) Prevent the State Air Resources Board from holding closed sessions when considering the proprietary specifications and performance data of manufacturers.

(14) Prevent the State Board of Education, or any committee advising the State Board of Education, from holding closed sessions on those portions of its review of assessment instruments pursuant to Chapter 5 (commencing with Section 60600) of Part 33 of the Education Code during which actual test content is reviewed and discussed. The purpose of this provision is to maintain the confidentiality of the assessments under review.

(15) Prevent the California Integrated Waste Management Board or its auxiliary committees from holding closed sessions for the purpose of discussing confidential tax returns, discussing trade secrets or confidential or proprietary information in its possession, or discussing other data, the public disclosure of which is prohibited by law.

(16) Prevent a state body that invests retirement, pension, or endowment funds from holding closed sessions when considering investment decisions. For purposes of consideration of shareholder voting on corporate stocks held by the state body, closed sessions for the purposes of voting may be held only with respect to election of corporate directors, election of independent auditors, and other financial issues that could have a material effect on the net income of the corporation. For the purpose of real property investment decisions that may be considered in a closed session pursuant to this paragraph, a state body shall also be exempt from the provisions of paragraph (7) relating to the identification of real properties prior to the closed session.

(17) Prevent a state body, or boards, commissions, administrative officers, or other representatives that may properly be designated by law or by a state body, from holding closed sessions with its representatives in discharging its responsibilities under Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 as the sessions relate to salaries, salary schedules, or compensation paid in

the form of fringe benefits. For the purposes enumerated in the preceding sentence, a state body may also meet with a state conciliator who has intervened in the proceedings.

(d) (1) Notwithstanding any other provision of law, any meeting of the Public Utilities Commission at which the rates of entities under the commission's jurisdiction are changed shall be open and public.

(2) Nothing in this article shall be construed to prevent the Public Utilities Commission from holding closed sessions to deliberate on the institution of proceedings, or disciplinary actions against any person or entity under the jurisdiction of the commission.

(e) (1) Nothing in this article shall be construed to prevent a state body, based on the advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the state body in the litigation.

(2) For purposes of this article, all expressions of the lawyer-client privilege other than those provided in this subdivision are hereby abrogated. This subdivision is the exclusive expression of the lawyer-client privilege for purposes of conducting closed-session meetings pursuant to this article. For purposes of this subdivision, litigation shall be considered pending when any of the following circumstances exist:

(A) An adjudicatory proceeding before a court, an administrative body exercising its adjudicatory authority, a hearing officer, or an arbitrator, to which the state body is a party, has been initiated formally.

(B) (i) A point has been reached where, in the opinion of the state body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the state body.

(ii) Based on existing facts and circumstances, the state body is meeting only to decide whether a closed session is authorized pursuant to clause (i).

(C) (i) Based on existing facts and circumstances, the state body has decided to initiate or is deciding whether to initiate litigation.

(ii) The legal counsel of the state body shall prepare and submit to it a memorandum stating the specific reasons and legal authority for the closed session. If the closed session is pursuant to paragraph (1), the memorandum shall include the title of the litigation. If the closed session is pursuant to subparagraph (A) or (B), the memorandum shall include the existing facts and circumstances on which it is based. The legal counsel shall submit the memorandum to the state body prior to the closed session, if feasible, and in any case no later than one week after the closed session. The memorandum shall be exempt from disclosure pursuant to Section 6254.25.

(iii) For purposes of this subdivision, "litigation" includes any adjudicatory proceeding, including eminent domain, before a court,

administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

(iv) Disclosure of a memorandum required under this subdivision shall not be deemed as a waiver of the lawyer-client privilege, as provided for under Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

(f) In addition to subdivisions (a), (b), and (c), nothing in this article shall be construed to do any of the following:

(1) Prevent a state body operating under a joint powers agreement for insurance pooling from holding a closed session to discuss a claim for the payment of tort liability or public liability losses incurred by the state body or any member agency under the joint powers agreement.

(2) Prevent the examining committee established by the State Board of Forestry, pursuant to Section 763 of the Public Resources Code, from conducting a closed session to consider disciplinary action against an individual professional forester prior to the filing of an accusation against the forester pursuant to Section 11503.

(3) Prevent an administrative committee established by the State Board of Accountancy pursuant to Section 5020 or 5020.3 of the Business and Professions Code from conducting a closed session to consider disciplinary action against an individual accountant prior to the filing of an accusation against the accountant pursuant to Section 11503. Nothing in this article shall be construed to prevent an examining committee established by the Board of Accountancy pursuant to Section 5023 of the Business and Professions Code from conducting a closed hearing to interview an individual applicant or accountant regarding the applicant's qualifications.

(4) Prevent a state body, as defined in Section 11121.2, from conducting a closed session to consider any matter that properly could be considered in closed session by the state body whose authority it exercises.

(5) Prevent a state body, as defined in Section 11121.7, from conducting a closed session to consider any matter that properly could be considered in a closed session by the body defined as a state body pursuant to Section 11121, 11121.2, or 11121.5.

(6) Prevent a state body, as defined in Section 11121.8, from conducting a closed session to consider any matter that properly could be considered in a closed session by the state body it advises.

(7) Prevent the State Board of Equalization from holding closed sessions for either of the following:

(A) When considering matters pertaining to the appointment or removal of the Executive Secretary of the State Board of Equalization.

(B) For the purpose of hearing confidential taxpayer appeals or data, the public disclosure of which is prohibited by law.

(8) Require the State Board of Equalization to disclose any action taken in closed session or documents executed in connection with

that action, the public disclosure of which is prohibited by law pursuant to Sections 15619 and 15641 of this code and Sections 833, 7056, 8255, 9255, 11655, 30455, 32455, 38705, 38706, 43651, 45982, 46751, 50159, 55381, and 60609 of the Revenue and Taxation Code.

(9) Prevent the California Earthquake Prediction Evaluation Council, or other body appointed to advise the Director of the Office of Emergency Services or the Governor pursuant to Section 8590 concerning matters relating to volcanic or earthquake predictions, from holding closed sessions when considering the evaluation of possible predictions.

(g) This article shall not prevent either of the following:

(1) The Teachers' Retirement Board or the Board of Administration of the Public Employees' Retirement System from holding closed sessions when considering matters pertaining to the recruitment, appointment, employment, or removal of the chief executive officer or when considering matters pertaining to the recruitment or removal of the Chief Investment Officer of the State Teachers' Retirement System or the Public Employees' Retirement System.

(2) The Commission on Teacher Credentialing from holding closed sessions when considering matters relating to the recruitment, appointment, or removal of its executive director.

SEC. 2. Section 11126.3 of the Government Code is amended to read:

11126.3. (a) Prior to holding any closed session, the state body shall disclose, in an open meeting, the general nature of 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. If the session is closed pursuant to paragraph (2) of subdivision (d) of Section 11126, the state body shall state the title of, or otherwise specifically identify, the proceeding or disciplinary action contemplated. However, should the body determine that to do so would jeopardize the body's ability to effectuate service of process upon one or more unserved parties if the proceeding or disciplinary action is commenced or that to do so would fail to protect the private economic and business reputation of the person or entity if the proceeding or disciplinary action is not commenced, then the state body shall notice that there will be a closed session and describe in general terms the purpose of that session. If the session is closed pursuant to subparagraph (A) of paragraph (2) of subdivision (e) of Section 11126, the state 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 body'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.

(b) In the closed session, the state body may consider only those matters covered in its disclosure.

(c) The disclosure shall be made as part of the notice provided for the meeting pursuant to Section 11125 or pursuant to subdivision (a) of Section 92032 of the Education Code and of any order or notice required by Section 11129.

(d) If, after the agenda has been published in compliance with this article, any additional pending litigation (under subdivision (e) of Section 11126) matters arise, the postponement of which will prevent the state body from complying with any statutory, court-ordered, or other legally imposed deadline, the state body may proceed to discuss those matters in closed session and shall publicly announce in the meeting the title of, or otherwise specifically identify, the litigation to be discussed, unless the body states that to do so would jeopardize the body'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. Such an announcement shall be deemed to comply fully with the requirements of this section.

(e) Nothing in this section shall require or authorize a disclosure of names or other information that would constitute an invasion of privacy or otherwise unnecessarily divulge the particular facts concerning the closed session or the disclosure of which is prohibited by state or federal law.

(f) After any closed session, the state body shall reconvene into open session prior to adjournment and shall make any reports, provide any documentation, and make any other disclosures required by Section 11125.2 of action taken in the closed session.

(g) 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 announcement.

CHAPTER 211

An act to add Chapter 3.4 (commencing with Section 6223) to Division 7 of Title 1 of the Government Code, relating to harassment against public officials.

[Approved by Governor July 20, 1998. Filed with Secretary of State July 21, 1998.]

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

SECTION 1. Chapter 3.4 (commencing with Section 6223) is added to Division 7 of Title 1 of the Government Code, to read:

CHAPTER 3.4. RECORDING OF DOCUMENTS

6223. (a) No person shall file or record a lawsuit, lien, or other encumbrance against a public officer or employee, knowing it is false, with the intent to harass the officer or employee or to influence or hinder the public officer or employee in discharging his or her official duties.

(b) This section shall apply only to lawsuits, liens, or other encumbrances pertaining to actions that arise in the course and scope of the public officer's or employee's duties.

(c) Any person who knowingly records or files, or directs another to record or file, a lawsuit, lien, or encumbrance in violation of subdivision (a) shall be liable to the person subject to the lawsuit, or the owner of the property bound by the lien or other encumbrance for a civil penalty not to exceed five thousand dollars ($5,000).

CHAPTER 212

An act to amend Sections 75033.5, 75075, 75076, 75077, 75520, and 75522 of the Government Code, relating to judges.

[Approved by Governor July 20, 1998. Filed with Secretary of State July 21, 1998.]

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

SECTION 1. Section 75033.5 of the Government Code is amended to read:

75033.5. Notwithstanding any other provision of this chapter, any judge with at least five years of service, may retire, and upon his or her application therefor to the Judges' Retirement System after reaching the age which would have permitted him or her to retire for age and length of service under Section 75025 had he or she remained continuously in service as a judge up to that age, receive a retirement allowance based upon the judicial service as a judge of a court of record, with which he or she is credited, in the same manner as other judges, except as otherwise provided by this section the retirement allowance is an annual amount equal to 3.75 percent of the compensation payable, at the time payments of the allowance fall due, to the judge holding the office which the retired judge last held prior to his or her discontinuance of his or her service as judge, multiplied by the number of years and fractions of years of service with which the retired judge is entitled to be credited at the time of his or her retirement, not to exceed 20 years.

A judge of a justice court who renders part-time service after January 1, 1990, shall receive a reduced retirement allowance based upon actual service rendered.

If a judge has served more than five years but less than 12 years, the above percentage of compensation payable shall be reduced 0.25 percent for each year that the service of the judge is less than 12 years. For the purposes of calculating the percentage of compensation payable, part-time service shall be the equivalent of full-time service.

No judge shall be eligible to receive an allowance pursuant to this section until the attainment of at least age 63 unless the judge is credited with 20 years of judicial service and has attained age 60.

The surviving spouse of any judge who has so elected to retire under this section shall receive for life an allowance equal to one-half of the retirement allowance that would be payable to the judge were he or she living and receiving the benefits accorded by this section, commencing with the day following the date of the death, if the judge dies after commencement of receipt of benefits, or the date the judge would have been able to commence receipt of benefits but for his or her death, if his or her death occurs prior to commencement of receipt of benefits.

An election to retire under this section shall be made in writing and filed with the Judges' Retirement System, and shall be without right of revocation, and upon that filing the judge shall be deemed retired with receipt of benefits deferred until herein provided, and the judicial office from which he or she has retired shall become vacant. The notice and election of retirement shall be sufficient if it states in substance that the judge elects to retire under the benefits of this section.

A judge who leaves his or her office prior to July 21, 1997, to accept any lucrative office under the United States within the purview of Section 7 of Article VII of the Constitution shall have any benefits receivable hereunder reduced by the amount of any salary or retirement benefits he or she receives by virtue of his or her service in that office. This paragraph shall not apply to any judge who left office on or after July 21, 1997.

SEC. 2. Section 75075 of the Government Code is amended to read:

75075. Any judge hereafter retiring pursuant to Section 75025 or 75060 may elect to receive the benefits accorded by this article if he or she retires for service or disability.

Every judge who qualifies under this section shall be deemed to elect to receive the benefits accorded by this article, unless he or she makes an election to the contrary by filing written notice thereof with the Judges' Retirement System at or prior to retirement.

Any judge whose service would qualify him or her for any benefits under this article if the total of the service included an additional 60 days, shall be deemed to have credited to him or her, sufficient service to qualify for the benefit.

SEC. 3. Section 75076 of the Government Code is amended to read:

75076. (a) A judge who qualifies, as prescribed in Section 75075, to receive the benefits accorded by this article shall receive a retirement allowance equal to 65 percent of the salary payable, at the time payment of the allowance falls due, to the judge holding the judicial office to which he or she was last elected or appointed; except that if upon retirement a judge has received credit for 20 or more years of service rendered prior to the expiration of the time within which the judge is eligible to elect to receive the benefits accorded by this article and for which he or she has contributed to the Judges' Retirement Fund his or her retirement allowance shall equal 75 percent of that salary.

(b) Any judge retiring after July 7, 1960, who has or shall become entitled to credit for service as a judge of a court of record prior to the inclusion of the judges of those courts, or of all of those courts, under the Judges' Retirement Law, or as a "judge of an excluded court" as defined by Section 75029, or as a "constitutional officer" or "public legal officer" as defined by Section 75030.5, without having contributed therefor to the Judges' Retirement Fund, may at any time prior to retirement contribute for all or any part of that service by paying into the fund a sum of money computed by applying to the rate of salary which he or she actually received during his or her first year of service as a judge the rate of deduction first applicable to his or her salary as a judge after the inclusion of the judges of his or her court under the Judges' Retirement Law, multiplied by the period of service for which contributions are elected to be made, plus interest at 3 percent a year to the date of his or her payment upon the amounts of the deductions and from the respective dates they would have been made if he or she had been the holder of a judicial office subject to the provisions of the Judges' Retirement Law at the time of the rendition of the services for which he or she has received or hereafter receives that credit.

The amount of any contribution authorized by this subdivision and interest thereon shall be determined by the Judges' Retirement System in accordance with this subdivision.

(c) If the judge retires pursuant to Section 75025, the allowance is payable during the remainder of his or her life; if pursuant to Section 75060, it is payable as provided in Section 75060.6.

SEC. 4. Section 75077 of the Government Code is amended to read:

75077. The surviving spouse of a judge who qualifies, as prescribed in Section 75075, to receive the benefits accorded by this article and who dies during retirement shall receive, until death or remarriage, an allowance equal to one-half of the retirement allowance that would be payable to the judge were he living and receiving the benefits accorded by this article.

SEC. 5. Section 75520 of the Government Code is amended to read:

75520. (a) A judge shall, monthly, accrue monetary credits equal to 18 percent of the judge's monthly salary.

(b) To the total monetary credits in each judge's account, an additional amount shall be credited monthly at a rate equal to the annual net earnings rate achieved by the Judges' Retirement System II Fund on its investments of moneys in the Judges' Retirement System II Fund during the preceding fiscal year.

SEC. 6. Section 75522 of the Government Code is amended to read:

75522. (a) A judge is eligible to retire pursuant to this section upon attaining both 65 years of age and 20 or more years of service, or upon attaining 70 years of age with a minimum of five years of service.

(b) The office of a judge who retires under this section becomes vacant on the date of the retirement.

(c) A judge who retires pursuant to this section shall, within 30 days after the effective date of the retirement, elect to receive either the benefits provided by subdivision (d) or the benefits provided by subdivision (e). Under rules adopted by the board, the time for the election may be extended in cases of illness or other hardship, but once made, the election shall be final and irrevocable.

(d) The judge may elect to receive for life a monthly retirement allowance equal to the benefit factor multiplied by the judge's final compensation multiplied by the number of years of service credit.

(1) The benefit factor for a judge eligible to retire pursuant to this section equals 3.75 percent per year of service.

(2) In no event shall the retirement allowance at the time of retirement exceed 75 percent of the judge's final compensation.

(e) The judge may elect to receive the amount of his or her monetary credits determined pursuant to Section 75520, including the credits added under subdivision (b) of that section computed to the last day of the month preceding the date of distribution. Under rules adopted by the board, the judge may elect to receive that amount in a single payment, or may direct that it be paid in an annuity of actuarially equivalent value for the judge's life or in one of the optional forms provided for in Section 75571.

(f) If a retired judge fails or refuses to make an election pursuant to subdivision (c) within the time allowed, he or she shall be deemed to have elected to receive a monthly retirement allowance under subdivision (d).

CHAPTER 213

An act making an appropriation for the current expenses of the government of the State of California, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 22, 1998. Filed with
Secretary of State July 22, 1998.]

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

SECTION 1. (a) The sum of eighteen billion nine hundred fifty-nine million dollars ($18,959,000,000) is hereby appropriated to the Controller from the funds and sources set forth in subdivision (b), for allocation by the Director of Finance pursuant to an executive order issued by the Governor, for the exclusive purpose of the payment of the current expenses of the government of the State of California, excluding salaries and per diem of Members of the Legislature, for the period of July 1, 1998, to August 5, 1998, inclusive. The allocation of the funds appropriated by this subdivision by the Director of Finance shall be to maintain a level of service by the government of the State of California that does not exceed the level of service authorized and funded for the 1997–98 fiscal year.

(b) The Director of Finance shall allocate the funds appropriated by subdivision (a) from the following funds and sources:

(1) $7,284,000,000 from the General Fund.
(2) $1,780,000,000 from appropriate special funds.
(3) $405,000,000 from appropriate bond funds.
(4) $4,286,000,000 from appropriate federal funds.
(5) $4,547,000,000 from appropriate nongovernmental cost funds.
(6) $657,000,000 from appropriate reimbursements.

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 settle existing and potential claims against the State of California and to end the personal hardship to existing and potential claimants as quickly as possible, it is necessary that this act take effect immediately.

CHAPTER 214

An act to amend Section 6 of the County Water Authority Act (Chapter 545 of the Statutes of 1943), relating to water.

[Approved by Governor July 26, 1998. Filed with
Secretary of State July 27, 1998.]

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

SECTION 1. Section 6 of the County Water Authority Act (Chapter 545 of the Statutes of 1943) is amended to read:

Sec. 6. (a) All powers, privileges, and duties vested in or imposed upon any authority incorporated under this act shall be exercised and performed by and through a board of directors. The exercise of any and all executive, administrative, and ministerial powers may be delegated by the board of directors to any of the offices created by this act or by the board of directors acting under this act.

(b) The board of directors shall consist of at least one representative from each public agency, the area of which is within the authority. The representatives shall be designated and appointed by the chief executive officers of those public agencies, respectively, with the consent and approval of the legislative bodies of the public agencies, respectively. Any member of the governing body of a member agency that is a water district may be appointed by that member agency to the board of the authority to serve as the agency's representative, except that, in the case of agencies with several representatives, a majority of the members of the governing body of the agency may not be appointed by the agency to serve as representatives on the board of the authority. Any director holding dual offices shall not vote upon any contract between a county water authority and the member public agency he or she represents on the authority's board. The term "water district," as used in this subdivision, has the same meaning as in subdivision (a) of Section 10.

(c) Members of the board of directors shall hold office for a term of six years, and until their successors are appointed and qualified. However, the terms of the members of the first board shall be determined by lot so that the terms of not less than one-half of the members shall be three years and the terms of the remainder shall be six years. Every member shall be subject to recall by the voters of the public agency from which that member is appointed, in accordance with the recall provisions of the freeholders' charter or other law applicable to the public agency. Notwithstanding that representatives are appointed for a fixed term of years, members of the board of directors serve at the will of the governing body of the public agency from which the member is appointed and may be removed by a majority vote of the governing body without a showing of good cause.

(d) In addition to one representative, any public agency may, at its option, designate and appoint one additional representative for each full 5 percent of the assessed value of property taxable for authority purposes which is within the public agency. However, the term of office of any representative shall not be changed or terminated by reason of any future change in the assessed value of property within any member agency.

(e) Each member of the board of directors shall be entitled to vote on all actions coming before the board and shall be entitled to cast one vote for each five million dollars ($5,000,000), or major fractional part thereof, of the total financial contribution paid to the authority that is attributable to the public agency of which the member is a

representative provided that no public agency shall have votes that exceed the number of the total votes of all the other public agencies. A public agency with more than one representative shall have the option, by ordinance, to either require its representatives to cast all of that agency's votes as a unit, as a majority of the representatives present shall determine, or to entitle each such representative to cast an equal share of the total vote of such agency. A copy of the ordinance shall be delivered to the secretary of the board of directors. The affirmative votes of members representing more than 50 percent of the number of votes of all the members shall be necessary, and except as herein provided, sufficient to carry any action coming before the board of directors. If the public agency member having the largest total financial contribution to the authority has more than 38 percent of the total financial contribution to the authority, the affirmative votes of members representing more than 55 percent of the number of votes of all the members shall be necessary, except as herein provided, to carry any action coming before the board of directors. Any meeting may be adjourned, continued, or recessed from day to day or from time to time, by vote of the director or directors present, regardless of the number of directors present.

(f) For the purposes of this section, "total financial contribution" includes all amounts paid in taxes, assessments, fees, and charges to or on behalf of the authority with respect to property located within the boundaries of member public agencies, including, but not limited to, standby charges, capacity charges, readiness to serve charges, connection and maintenance fees, annexation fees and charges for water delivered to member public agencies by the authority excluding the cost of treatment for the water. The total financial contribution shall be determined by the board of directors as of the end of each fiscal year. Allocation of voting power shall be reestablished by the board of directors on January 1 of each year based upon the calculation determined for the previous fiscal year.

(g) Subject to confirmation by his or her public agency, a member of the board of directors may designate another member of the board of directors to vote in his or her absence. The designation and the confirmation shall be by a written instrument filed with the authority. If a director will be absent and wishes the designee to cast the vote, a written notice shall be filed with the secretary of the board of directors. If the notice is not received by the authority, the vote of the absent director will not be counted. The designation, confirmation, and notices shall be maintained on file with the authority. The designation may be changed from time to time with the confirmation of the representative's agency. The designation shall not direct how the absent representative's vote shall be cast on any matter. Directors from a public agency represented by more than one director shall be deemed confirmed as designated representatives to vote for absent directors from that public agency.

This section does not apply to a public agency that has exercised the option under subdivision (e) to cast all of that agency's votes as a unit.

(h) Notwithstanding subdivision (f), the total financial contribution and the vote of each member public agency of the San Diego County Water Authority as of July 1, 1997, shall be as follows:

AGENCY	Total Financial Contribution July 1, 1997	VOTES
Carlsbad Municipal Water District	$129,787,887	25.96
City of Del Mar	13,712,188	2.74
City of Escondido	128,929,059	25.78
Fallbrook Public Utilities District	116,801,107	23.36
Helix Water District	356,506,629	71.30
National City	45,046,563	9.01
City of Oceanside	192,690,117	38.53
Olivenhain Municipal Water District	73,733,684	14.75
Otay Water District	146,294,367	29.26
Padre Dam Municipal Water District	142,768,644	28.55
Pendleton Military Res.	10,921,265	2.18
City of Poway	82,602,257	16.52
Rainbow Municipal Water District	194,841,500	38.96
Ramona Municipal Water District	65,220,318	13.04
Rincon Del Diablo Municipal Water District	69,024,271	13.80
City of San Diego	1,864,642,414	372.97
San Dieguito Water District	51,831,643	10.37
Santa Fe Irrigation District	64,860,359	12.97
South Bay Irrigation District	139,063,067	27.81
Vallecitos Water District	64,994,093	13.00
Valley Center Municipal Water District	243,877,685	48.77
Vista Irrigation District	118,493,448	23.70
Yuima Municipal Water District	15,146,776	3.03
TOTALS:	$4,331,789,341	866.36

(i) The total financial contribution for the San Diego County Water Authority shall be determined by the board of directors as of the end of each fiscal year by adding the total financial contribution

of each agency for the fiscal year to the totals provided for in subdivision (h) establishing the total financial contribution as of July 1, 1997. Allocation of voting power shall be reestablished by the board of directors to be effective on January 1 of each year based upon the calculation determined for the previous fiscal year. In addition to the definition in subdivision (f), "total financial contribution" shall also include all amounts paid in taxes, assessments, fees, and charges paid to or on behalf of the Metropolitan Water District of Southern California with respect to property located within the boundaries of member public agencies including, but not limited to, standby charges, capacity charges, readiness to serve charges, connection and maintenance fees, annexation fees, and charges for water sold to member public agencies by the authority excluding the cost of treatment for the water.

(j) Members of the first board of directors so constituted shall convene at the call of the clerk of the board of supervisors in the meeting room of the board of supervisors at the county seat of the county, and immediately upon convening, the board of directors shall elect from its membership a chairperson, a vice chairperson, and a secretary, who shall serve for a period of two years, or until their respective successors are elected and qualified.

(k) A quorum necessary for the transaction of business at any meeting of the board of directors exists whenever there are present at the meeting a majority of the membership of the board of directors that includes at least one-half of the number of representatives of each public agency member having more than six representatives serving on the board of directors. Designees appointed pursuant to subdivision (g) shall not be considered "present" for the purposes of establishing a quorum. However, any regular or special meeting of the board of directors at which a quorum is not present may be continued from time to time until a quorum is present to transact the business of the board of directors.

CHAPTER 215

An act to amend Sections 1382 and 1383.1 of the Health and Safety Code, and to repeal Section 11512.61 of the Insurance Code, relating to health coverage.

[Approved by Governor July 26, 1998. Filed with Secretary of State July 27, 1998.]

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

SECTION 1. Section 1382 of the Health and Safety Code is amended to read:

1382. (a) The commissioner shall conduct an examination of the fiscal and administrative affairs of any health care service plan, and each person with whom the plan has made arrangements for administrative, management, or financial services, as often as deemed necessary to protect the interest of subscribers or enrollees, but not less frequently than once every five years.

(b) The expense of conducting any additional or nonroutine examinations pursuant to this section, and the expense of conducting any additional or nonroutine medical surveys pursuant to Section 1380 shall be charged against the plan being examined or surveyed. The amount shall include the actual salaries or compensation paid to the persons making the examination or survey, the expenses incurred in the course thereof, and overhead costs in connection therewith as fixed by the commissioner. In determining the cost of examinations or surveys, the commissioner may use the estimated average hourly cost for all persons performing examinations or surveys of plans for the fiscal year. The amount charged shall be remitted by the plan to the commissioner. If recovery of these costs cannot be made from the plan, these costs may be added to, but subject to the limitation of, the assessment provided for in subdivision (b) of Section 1356.

(c) Reports of all examinations shall be open to public inspection, except that no examination shall be made public, unless the plan has had an opportunity to review the examination report and file a statement or response within 45 days of the date that the department provided the report to the plan. After reviewing the plan's response, the commissioner shall issue a final report that excludes any survey information, legal findings, or conclusions determined by the commissioner to be in error, describes compliance efforts, identifies deficiencies that have been corrected by the plan on or before the time the commissioner receives the plan's response, and describes remedial actions for deficiencies requiring longer periods for the remedy required by the commissioner or proposed by the plan.

(d) If requested in writing by the plan, the commissioner shall append the plan's response to the final report issued pursuant to subdivision (c). The plan may modify its response or statement at any time and provide modified copies to the department for public distribution not later than 10 days from the date of notification from the department that the final report will be made available to the public. The addendum to the response or statement shall also be made available to the public.

(e) Notwithstanding subdivision (c), any health care service plan that contracts with the State Department of Health Services to provide service to Medi-Cal beneficiaries pursuant to Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code may make a written request to the commissioner to permit the State Department of Health Services to review its examination report.

(f) Upon receipt of the written request described in subdivision (e), the commissioner may, consistent with Section 6254.5 of the Government Code, permit the State Department of Health Services to review the plan's examination report.

(g) Nothing in this section shall be construed as affecting the commissioner's authority pursuant to Article 7 (commencing with Section 1386) or Article 8 (commencing with Section 1390).

SEC. 2. Section 1383.1 of the Health and Safety Code is amended to read:

1383.1. (a) On or before July 1, 1997, every health care service plan shall file with the department a written policy, which is not subject to approval or disapproval by the department, describing the manner in which the plan determines if a second medical opinion is medically necessary and appropriate. Notice of the policy and information regarding the manner in which an enrollee may receive a second medical opinion shall be provided to all enrollees in the plan's evidence of coverage. The written policy shall describe the manner in which requests for a second medical opinion are reviewed by the plan.

(b) This section shall not apply to any health care service plan contract authorized under Article 5.6 (commencing with Section 1374.60).

(c) Nothing in this section shall require a health care service plan to cover services or provide benefits that are not otherwise covered under the terms and conditions of the plan contract, nor to provide services through providers who are not under contract with the plan.

SEC. 3. Section 11512.61 of the Insurance Code is repealed.

CHAPTER 216

An act to amend Section 25503.7 of the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor July 26, 1998. Filed with Secretary of State July 27, 1998.]

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

SECTION 1. Section 25503.7 of the Business and Professions Code is amended to read:

25503.7. A winegrower, beer manufacturer, or beer and wine wholesaler may serve food and alcoholic beverages to any person, including a person licensed under this division and his or her employees and representatives, who is attending a meeting held

upon or who is visiting the premises of the winegrower, beer manufacturer, or beer and wine wholesaler.

CHAPTER 217

An act to amend Sections 1094, 1095, 1110, 1112, 1328, and 2714 of, and to repeal Sections 1095.1 and 2060 of, the Unemployment Insurance Code, relating to unemployment insurance.

[Approved by Governor July 26, 1998. Filed with Secretary of State July 27, 1998.]

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

SECTION 1. Section 1094 of the Unemployment Insurance Code is amended to read:

1094. (a) Except as otherwise specifically provided in this code, the information obtained in the administration of this code is confidential, not open to the public, and shall be for the exclusive use and information of the director in discharge of his or her duties.

(b) The information released to authorized entities pursuant to other provisions of the code shall not be admissible in evidence in any action or special proceeding, other than one arising out of the provisions of this code or one described in Section 1095.

(c) The information may be tabulated and published in statistical form for use by federal, state, and local governmental departments and agencies, and the public, except that the name of the employing unit or of any worker shall never be divulged in the course of the tabulation or publication.

(d) Wages as defined by Section 13009 and amounts required to be deducted and withheld under Section 13020 shall not be disclosed except as provided in Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(e) Any person who knowingly accesses, uses, or discloses any confidential information without authorization is in violation of this section and is guilty of a misdemeanor.

SEC. 2. Section 1095 of the Unemployment Insurance Code is amended to read:

1095. The director shall permit the use of any information in his or her possession to the extent necessary for any of the following purposes and may require reimbursement for all direct costs incurred in providing any and all information specified in this section, except information specified in subdivisions (a) to (e), inclusive:

(a) To enable the director or his or her representative to carry out his or her responsibilities under this code.

(b) To properly present a claim for benefits.

(c) To acquaint a worker or his or her authorized agent with his or her existing or prospective right to benefits.

(d) 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).

(e) To enable an employer to receive a reduction in contribution rate.

(f) To enable federal, state, or local government departments or agencies, 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 Division 9 (commencing with Section 10000) of the Welfare and Institutions Code, or Part A of Title IV of Social Security Act, where the verification or determination is directly connected with, and limited to, the administration of public social services.

(g) 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.

(h) To enable state or local governmental departments or agencies 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 or to enable the collection of expenditures for medical assistance services pursuant to Part 5 (commencing with Section 17000) of Division 9 of the Welfare and Institutions Code.

(i) 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, or by any federal law enforcement officer to whom the Attorney General has delegated authority to enforce federal search warrants, as defined under Sections 60.2 and 60.3 of Title 28 of the Code of Federal Regulations, as amended, and when the requesting officer has been designated by the head of the law enforcement agency and 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.

(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.

(j) 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.

(k) To provide public employee retirement systems in California with information relating to the earnings of any person who has applied for or is receiving a disability income, disability allowance, or disability retirement allowance, from a public employee retirement system. The earnings information shall be released only upon written request from the governing board specifying that the person has applied for or is receiving a disability allowance or disability retirement allowance from its retirement 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.

(*l*) 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.

(m) To enable federal, state, or local governmental departments or agencies to administer child support enforcement programs under Title IV of the Social Security Act (42 U.S.C. Sec. 651 et seq.).

(n) To provide federal, state, or local governmental departments or agencies with wage and claim information in its possession that will assist those departments and agencies in the administration of the victims of crime program or 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.

(o) To provide federal, state, or local governmental departments or agencies with information concerning any individuals who are or have been:

(1) Directed by state mandate or court order to pay restitution, fines, penalties, assessments, or fees as a result of a violation of law.

(2) Delinquent or in default on guaranteed student loans or who owe repayment of funds received through other financial assistance programs administered by those agencies. The information released by the director for the purposes of this paragraph shall not include unemployment insurance benefit information.

(p) 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.

(q) To enable the Director of the Bureau for Private Postsecondary and Vocational Education, or his or her representatives, to access unemployment insurance quarterly wage data on a case-by-case basis to verify information on school administrators, school staff, and students provided by those schools who are being investigated for possible violations of Chapter 7 (commencing with Section 94700) of Part 59 of the Education Code.

(r) 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.

(s) To enable city and county planning agencies to develop economic forecasts for planning purposes. The information shall be limited to businesses within the jurisdiction of the city or county

whose planning agency is requesting the information, and shall not include information regarding individual employees.

(t) To provide the State Department of Developmental Services with wage and employer information that will assist in the collection of moneys owed by the recipient, parent, or any other legally liable individual for services and supports provided pursuant to Chapter 9 (commencing with Section 4775) of Division 4.5 of, and Chapter 2 (commencing with Section 7200) and Chapter 3 (commencing with Section 7500) of Division 7 of, the Welfare and Institutions Code.

(u) The disclosure of the name and address of an individual or business entity that was issued an assessment that included penalties under Section 1128 or 1128.1 shall not be in violation of Section 1094 if the assessment is final. The disclosure may also include any of the following:

(1) The total amount of the assessment.

(2) The amount of the penalty imposed under Section 1128 or 1128.1 that is included in the assessment.

(3) The facts that resulted in the charging of the penalty under Section 1128 or 1128.1.

SEC. 3. Section 1095.1 of the Unemployment Insurance Code is repealed.

SEC. 4. Section 1110 of the Unemployment Insurance Code is amended to read:

1110. (a) Employer contributions required under Sections 976 and 976.6, the amount of benefits received by any individual pursuant to this part that is deducted from an award or settlement made by the employer under the provisions of Section 1382, and, except as provided by subdivision (b) of this section, worker contributions required under Section 984 are due and payable on the first day of the calendar month following the close of each calendar quarter and shall become delinquent if not paid on or before the last day of that month.

(b) Workers' contributions required under Section 984 are due and payable at the same time and by the same method as amounts required to be withheld under Section 13020 are paid to the department pursuant to Section 13021, regardless of the amount of accumulated unpaid liability for workers' contributions.

(c) Employer contributions submitted pursuant to Section 976.5 shall be paid on or before the last working day of March of the calendar year to which the reduced contribution rate would be applicable. Any employer whose eligibility for an unemployment insurance contribution rate determination is redetermined to make that employer eligible to submit voluntary unemployment insurance contributions in accordance with Section 976.5, may submit a voluntary unemployment insurance contribution within 30 days of the date of notification of the redetermination.

(d) Except as provided in subdivision (e), any employer described in Sections 682 and 684 may elect to report and pay

employer contributions required under Sections 976 and 976.6, and worker contributions required under Section 984, annually. All contributions are due and payable on the first day of January following the close of the prior calendar year and shall become delinquent if not paid on or before the last day of that month. An election under this subdivision shall be effective the first day of the calendar year in which it is approved by the department. An election under this subdivision shall not be approved if the employer has an outstanding return or report delinquency on the records of the department, or an unpaid amount owed to the department, that is not the subject of a timely petition for reassessment pending before the appeals board at the time the election is filed.

(e) Any employer described in Sections 682 and 684 who pays more than twenty thousand dollars ($20,000) in wages annually, shall not be entitled to the election allowed in subdivision (d). If at any time during the year the total wages paid by an employer electing to file under subdivision (d) exceeds twenty thousand dollars ($20,000), the election shall be terminated at the close of that calendar quarter. In addition to the report of wages due for that quarter, the employer shall file a return and pay any contributions due for that portion of the year during which the election was in effect, and shall pay contributions in accordance with subdivisions (a), (b), and (c) for the remainder of that year.

(f) Contributions due pursuant to this section may be submitted by electronic funds transfer, as defined in Section 13021.5. Contributions submitted by electronic funds transfer shall be deemed complete in accordance with paragraph (4) of subdivision (e) of Section 13021.

SEC. 5. Section 1112 of the Unemployment Insurance Code is amended to read:

1112. (a) Any employer who without good cause fails to pay any contributions required of him or her or of his or her workers, except amounts assessed under Article 8 of this chapter, within the time required shall pay a penalty of 10 percent of the amount of those contributions.

(b) Any employer required to remit payments by electronic funds transfer pursuant to Section 13021, who without good cause remits those amounts by means other than electronic funds transfer shall pay a penalty of 10 percent of the amount of those contributions.

SEC. 6. Section 1328 of the Unemployment Insurance Code is amended to read:

1328. The department shall consider the facts submitted by an employer pursuant to Section 1327 and make a determination as to the claimant's eligibility for benefits. The department shall promptly notify the claimant and any employer who prior to the determination has submitted any facts or given any notice pursuant to Section 1327 or this section and authorized regulations of the determination or reconsidered determination and the reasons therefor. If after notice

of a determination or reconsidered determination the employing unit acquires knowledge of facts which may affect the eligibility of the claimant and those facts could not reasonably have been known within the 10-day period provided by Section 1327, the employing unit shall within 10 days of acquiring that knowledge submit those facts to the department, and the 10-day period may be extended for good cause. The claimant and any such employer may appeal from a determination or reconsidered determination to an administrative law judge within 20 days from mailing or personal service of notice of the determination or reconsidered determination. The 20-day period may be extended for good cause, which shall include, but not be limited to, mistake, inadvertence, surprise, or excusable neglect. The director shall be an interested party to any appeal.

SEC. 7. Section 2060 of the Unemployment Insurance Code is repealed.

SEC. 8. Section 2714 of the Unemployment Insurance Code is amended to read:

2714. All medical records of the department obtained under this part, except to the extent necessary for the proper administration of this part, or as provided elsewhere in law shall be confidential and shall not be published or be open to public inspection in any manner revealing the identity of the claimant, or the nature or cause of his or her disability. Medical records that are disclosed shall be disclosed only pursuant to Section 1095, and in any case, shall remain confidential.

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 that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 218

An act to amend Section 248 of the Penal Code, relating to aircraft.

[Approved by Governor July 26, 1998. Filed with Secretary of State July 27, 1998.]

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

SECTION 1. Section 248 of the Penal Code is amended to read:

248. Any person who, with the intent to interfere with the operation of an aircraft, willfully shines a light or other bright device, of an intensity capable of impairing the operation of an aircraft, at an aircraft, shall be punished by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

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 that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 219

An act to amend Sections 7.6, 7.7, and 7.8 of the San Benito County Water Conservation and Flood Control District Act (Chapter 1598 of the Statutes of 1953), relating to the San Benito County Water District.

[Approved by Governor July 26, 1998. Filed with Secretary of State July 27, 1998.]

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

SECTION 1. Section 7.6 of the San Benito County Water District Act (Chapter 1598 of the Statutes of 1953) is amended to read:

Sec. 7.6. The board may by resolution require the district to annually prepare an investigation and report on groundwater conditions of the district and the zones thereof, for the period from October 1 of the preceding calendar year through September 30 of the current year and on activities of the district for protection and augmentation of the water supplies of the district and the zones thereof. The investigation and report shall include all of the following information:

(a) Information for the consideration of the board in its determination of the annual overdraft.

(b) Information for the consideration of the board in its determination of the accumulated overdraft as of September 30 of the current calendar year.

(c) A report as to the total production of water from the groundwater supplies of the district and the zones thereof as of September 30 of the current calendar year.

(d) An estimate of the annual overdraft for the current water year and for the ensuing water year.

(e) Information for the consideration of the board in its determination of the estimated amount of agricultural water and the estimated amount of water other than agricultural water to be withdrawn from the groundwater supplies of the district and the zones thereof for the ensuing water year.

(f) The amount of water the district is obligated to purchase during the ensuing water year.

(g) A recommendation as to the quantity of water needed for surface delivery and for replenishment of the groundwater supplies of the district and the zones thereof the ensuing water year.

(h) A recommendation as to whether or not a groundwater charge should be levied in any zone or zones of the district during the ensuing water year.

(i) If any groundwater charge is recommended, a proposal of a rate per acre-foot for agricultural water and a rate per acre-foot for all water other than agricultural water for such zone or zones.

(j) Any other information the board requires.

SEC. 2. Section 7.7 of the San Benito County Water District Act (Chapter 1598 of the Statutes of 1953) is amended to read:

Sec. 7.7. (a) On the third Monday in December of each year, the groundwater report shall be delivered to the clerk of the board in writing. The clerk shall publish, pursuant to Section 6061 of the Government Code, a notice of the receipt of the report and of a public hearing to be held on the second Monday of January of the following year in a newspaper of general circulation printed and published within the district, at least 10 days prior to the date at which the public hearing regarding the groundwater report shall be held. The notice shall include, but is not limited to, an invitation to all operators of water-producing facilities within the district to call at the offices of the district to examine the groundwater report.

(b) The board shall hold, on the second Monday of January of each year, a public hearing, at which time any operator of a water-producing facility within the district, or any person interested in the condition of the groundwater supplies or the surface water supplies of the district, may in person, or by representative, appear and submit evidence concerning the groundwater conditions and the surface water supplies of the district. Appearances also may be made supporting or protesting the written groundwater report, including, but not limited to, the engineer's recommended groundwater charge.

SEC. 3. Section 7.8 of the San Benito County Water District Act (Chapter 1598 of the Statutes of 1953) is amended to read:

Sec. 7.8. (a) Prior to the end of the water year in which a hearing is held pursuant to subdivision (b) of Section 7.7, the board shall hold a public hearing, noticed pursuant to Section 6061 of the Government Code, to determine if a groundwater charge should be levied in any zone or zones. If the board determines that a groundwater charge should be levied, it shall levy, assess, and affix such a charge or charges against all persons operating groundwater-producing facilities within the zone or zones during the ensuing water year. The charge shall be computed at a fixed and uniform rate per acre-foot for agricultural water, and at a fixed and uniform rate per acre-foot for all water other than agricultural water. Different rates may be established in different zones. However, in each zone, the rate for agricultural water shall be fixed and uniform and the rate for water other than agricultural water shall be fixed and uniform. The rate for agricultural water shall not exceed one-third of the rate for all water other than agricultural water.

(b) The groundwater charge in any year shall not exceed the costs reasonably borne by the district in the period of the charge in providing the water supply service authorized by this act in the district or a zone or zones thereof.

(c) Any groundwater charge levied pursuant to this section shall be in addition to any general tax or assessment levied within the district or any zone or zones thereof.

(d) Clerical errors occurring or appearing in the name of any person or in the description of the water-producing facility where the production of water therefrom is otherwise properly charged, or in the making or extension of any charge upon the records which do not affect the substantial rights of the assessee or assessees, shall not invalidate the groundwater charge.

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 that may be incurred by a local agency or school district are the result of a program for which legislative authority was requested by that local agency or school district, within the meaning of Section 17556 of the Government Code and Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 220

An act to add Section 2421 to the Vehicle Code, relating to the Department of the California Highway Patrol.

[Approved by Governor July 26, 1998. Filed with Secretary of State July 27, 1998.]

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

SECTION 1. Section 2421 is added to the Vehicle Code, to read:

2421. Notwithstanding Section 11032 of the Government Code, the commissioner may approve the out-of-state travel within the United States of members of the California Highway Patrol, in numbers the commissioner deems appropriate, to attend out-of-state funerals of law enforcement officers or to attend out-of-state events related to the funerals of law enforcement officers, including the National Peace Officers Memorial. Reimbursement for actual and necessary traveling expenses shall be allowed for members of the California Highway Patrol approved to travel out of state pursuant to this section up to a maximum aggregate amount of forty thousand dollars ($40,000) in any fiscal year.

CHAPTER 221

An act to amend Sections 253.1, 263.3, 263.8, 357, and 510 of, and to repeal Section 330 of, the Streets and Highways Code, relating to highways.

[Approved by Governor July 26, 1998. Filed with Secretary of State July 27, 1998.]

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

SECTION 1. Section 253.1 of the Streets and Highways Code is amended to read:

253.1. The California freeway and expressway system shall include:

Routes 5, 6, 8, 10, 14, 15, 18, 24, 28, 32, 34, 37, 40, 44, 47, 48, 50, 51, 52, 53, 54, 55, 56, 57, 59, 60, 61, 63, 65, 67, 68, 70, 71, 73, 74, 78, 80, 81, 83, 85, 87, 88, 89, 90, 93, 97, 100, 102, 103, 105, 107, 108, 118, 121, 122, 124, 125, 126, 134, 136, 139, 140, 145, 148, 149, 154, 156, 161, 163, 164, 179, 181, 183, 184, 199, 205, 210, 215, 217, 221, 223, 230, 232, 234, 235, 237, 238, 239, 241, 242, 247, 249, 251, 257, 258, 259, 261, 280, 330, 371, 380, 405, 505, 580, 605, 680, 710, 780, 805, 880, and 980 in their entirety.

SEC. 2. Section 263.3 of the Streets and Highways Code is amended to read:

263.3. The state scenic highway system shall also include:

Route 5 from:

(a) The international boundary near Tijuana to Route 75 near the south end of San Diego Bay.

(b) San Diego opposite Coronado to Route 74 near San Juan Capistrano.

(c) Route 210 near Tunnel Station to Route 126 near Castaic.

(d) Route 152 west of Los Banos to Route 580 near Vernalis.

(e) Route 44 near Redding to the Shasta Reservoir.

(f) Route 89 near Mt. Shasta to Route 97 near Weed.

(g) Route 3 near Yreka to the Oregon state line near Hilts.

Route 8 from Sunset Cliffs Boulevard in San Diego to Route 98 near Coyote Wells.

Route 9 from:

(a) Route 1 near Santa Cruz to Route 236 near Boulder Creek.

(b) Route 236 near Boulder Creek to Route 236 near Waterman Gap.

(c) Route 236 near Waterman Gap to Route 35.

(d) Saratoga to Route 17 near Los Gatos.

(e) Blaney Plaza in Saratoga to Route 35.

Route 10 from Route 38 near Redlands to Route 62 near Whitewater.

Route 12 from Route 101 near Santa Rosa to Route 121 near Sonoma.

Route 14 from Route 58 near Mojave to Route 395 near Little Lake.

Route 15 from:

(a) Route 76 near the San Luis Rey River to Route 91 near Corona.

(b) Route 58 near Barstow to Route 127 near Baker.

Route 16 from Route 20 to Capay.

Route 17 from Route 1 near Santa Cruz to Route 9 near Los Gatos.

Route 18 from Route 138 near Mt. Anderson to Route 247 near Lucerne Valley.

Route 20 from:

(a) Route 1 near Fort Bragg to Route 101 near Willits.

(b) Route 101 near Calpella to Route 16.

(c) Route 49 near Grass Valley to Route 80 near Emigrant Gap.

Route 24 from the Alameda-Contra Costa county line to Route 680 in Walnut Creek.

Route 25 from Route 198 to Route 156 near Hollister.

Route 27 from Route 1 to Mulholland Drive.

Route 29 from:

(a) Route 37 near Vallejo to Route 221 near Napa.

(b) The vicinity of Trancas Street in northwest Napa to Route 20 near Upper Lake.

Route 33 from:

(a) Route 101 near Ventura to Route 150.

(b) Route 150 to Route 166 in Cuyama Valley.

(c) Route 198 near Coalinga to Route 198 near Oilfields.

Route 36 from:

(a) Route 101 near Alton to Route 3 near Peanut.

(b) Route 89 near Morgan Summit to Route 89 near Deer Creek Pass.

SEC. 3. Section 263.8 of the Streets and Highways Code is amended to read:

263.8. The state scenic highway system shall also include:

Route 198 from:

(a) Route 101 near San Lucas to Route 33 near Coalinga.

(b) Route 33 near Oilfields to Route 5.

(c) Route 99 near Goshen to the Sequoia National Park line.

Route 210 from:

(a) Route 5 near Tunnel Station to Route 134.

(b) Route 330 near Highland to Route 10 near Redlands.

Route 215 from Route 74 near Romoland to Route 74 near Perris.

Route 251 from Route 37 near Nicasio to Route 1 near Point Reyes Station.

Route 280 from Route 17 in Santa Clara County to Route 80 near First Street in San Francisco.

Route 299 from:

(a) Route 101 near Arcata to Route 96 near Willow Creek.

(b) Route 3 near Weaverville to Route 5 near Redding.

(c) Route 89 near Burney to Route 139 near Canby.

Route 395 from Route 14 near Little Lake to Route 89 near Coleville.

Route 580 from Route 5 southwest of Vernalis to Route 80.

Route 680 from the Santa Clara-Alameda county line to Route 24 in Walnut Creek.

SEC. 4. Section 330 of the Streets and Highways Code is repealed.

SEC. 5. Section 357 of the Streets and Highways Code is amended to read:

357. Route 57 is from:

(a) Route 1 near Huntington Beach to Route 22 near Santa Ana.

(b) Route 5 near Santa Ana to Route 210 near San Dimas.

SEC. 6. Section 510 of the Streets and Highways Code is amended to read:

510. Route 210 is from:

(a) Route 5 near Tunnel Station to Route 57 near San Dimas via the vicinity of San Fernando.

(b) Route 57 near San Dimas to Route 10 in Redlands via the vicinity of Highland.

CHAPTER 222

An act to amend Section 4364 of the Welfare and Institutions Code, relating to human services, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 26, 1998. Filed with Secretary of State July 27, 1998.]

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

SECTION 1. Section 4364 of the Welfare and Institutions Code is amended to read:

4364. The Statewide Resources Consultant shall do all of the following:

(a) Serve as the centralized information and technical assistance clearinghouse for brain-impaired adults, their families, caregivers, service professionals and agencies, and volunteer organizations, and in this capacity may assist organizations that serve families with adults with Huntington's disease and Alzheimer's disease by reviewing data collected by those organizations in their efforts to determine the means of providing high-quality appropriate care in health facilities and other out-of-home placements; and shall disseminate information, including, but not limited to, the results of research and activities conducted pursuant to its responsibilities set forth in this chapter as determined by the director, and which may include forwarding quality of care and related information to appropriate state departments for consideration.

(b) Work closely and coordinate with organizations serving brain-impaired adults, their families, and caregivers in order to ensure, consistent with requirements for quality of services as may be established by the director, that the greatest number of persons are served and that the optimal number of organizations participate.

(c) Develop and conduct training that is appropriate for a variety of persons, including, but not limited to, all of the following:

(1) Families.

(2) Caregivers and service professionals involved with brain-impaired adults.

(3) Advocacy and self-help family and caregiver support organizations.

(4) Educational institutions.

(d) Provide other training services, including, but not limited to, reviewing proposed training curricula regarding the health, psychological, and caregiving aspects of individuals with brain damage as defined in subdivision (f) of Section 4362. The proposed curricula may be submitted by providers or statewide associations representing individuals with brain damage, their families, or caregivers.

(e) Provide service and program development consultation to resource centers and to identify funding sources that are available.

(f) Assist the appropriate state agencies in identifying and securing increased federal financial participation and third-party reimbursement, including, but not limited to, Title XVIII (42 U.S.C. Sec. 1395 and following) and Title XIX (42 U.S.C. Sec. 1396 and following) of the federal Social Security Act.

(g) Conduct public social policy research based upon the recommendations of the Director of Mental Health.

(h) Assist the director, as the director may require, in conducting directly, or through contract, research in brain damage epidemiology and data collection, and in developing a uniform terminology and nomenclature.

(i) Assist the director in establishing criteria for, and in selecting resource centers and in designing a methodology for, the consistent assessment of resources and needs within the geographic areas to be serviced by the resource centers.

(j) Conduct conferences, as required by the director, for families, caregivers, service providers, advocacy organizations, educational institutions, business associations, community groups, and the general public, in order to enhance the quality and availability of high-quality, low-cost care and treatment of brain-impaired adults.

(k) Make recommendations, after consultation with appropriate state department representatives, to the Director of Mental Health and the Secretary of Health and Welfare for a comprehensive statewide policy to support and strengthen family caregivers, including the provision of respite and other support services, in order to implement more fully this chapter. The Statewide Resources Consultant shall coordinate its recommendations to assist the Health and Welfare Agency to prepare its report on long-term care programs pursuant to Chapter 1.5 (commencing with Section 100145) of Part 1 of Division 101 of the Health and Safety Code.

(*l*) Conduct an inventory and submit an analysis of California's publicly funded programs serving family caregivers of older persons and functionally impaired adults.

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

In order to ensure the timely involvement of the Statewide Resources Consultant in assisting the Health and Welfare Agency with its report on long-term care, to acknowledge the need to support families providing 80 percent of all care at home to older adults needing long-term care, and to recognize the fact that the availability of family caregivers is often the deciding factor of whether or not someone can remain at home or must be placed in an expensive

skilled nursing or other out-of-home facility, it is necessary that this act take effect immediately.

CHAPTER 223

An act to amend Sections 1300 and 1305 of the Penal Code, relating to criminal procedure.

[Approved by Governor July 27, 1998. Filed with Secretary of State July 27, 1998.]

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

SECTION 1. Section 1300 of the Penal Code is amended to read:

1300. (a) At any time before the forfeiture of their undertaking, or deposit by a third person, the bail or the depositor may surrender the defendant in their exoneration, or he may surrender himself, to the officer to whose custody he was committed at the time of giving bail, in the following manner:

(1) A certified copy of the undertaking of the bail, a certified copy of the certificate of deposit where a deposit is made, or an affidavit given by the bail licensee or surety company listing all that specific information that would be included on a certified copy of an undertaking of bail, must be delivered to the officer who must detain the defendant in his custody thereon as upon a commitment, and by a certificate in writing acknowledge the surrender.

(2) The bail or depositor, upon surrendering the defendant, shall make reasonable effort to give notice to the defendant's last attorney of record, if any, of such surrender.

(3) The officer to whom the defendant is surrendered shall, within 48 hours of the surrender, bring the defendant before the court in which the defendant is next to appear on the case for which he has been surrendered. The court shall advise the defendant of his right to move the court for an order permitting the withdrawal of any previous waiver of time and shall advise him of the authority of the court, as provided in subdivision (b), to order return of the premium paid by the defendant or other person, or any part of it.

(4) Upon the undertaking, or certificate of deposit, and the certificate of the officer, the court in which the action or appeal is pending may, upon notice of five days to the district attorney of the county, with a copy of the undertaking, or certificate of deposit, and the certificate of the officer, order that the bail or deposit be exonerated. However, if the defendant is released on his own recognizance or on another bond before the issuance of such an order, the court shall order that the bail or deposit be exonerated without prejudice to the court's authority under subdivision (b). On

filing the order and papers used on the application, they are exonerated accordingly.

(b) Notwithstanding subdivision (a), if the court determines that good cause does not exist for the surrender of a defendant who has not failed to appear or has not violated any order of the court, it may, in its discretion, order the bail or the depositor to return to the defendant or other person who has paid the premium or any part of it, all of the money so paid or any part of it.

SEC. 2. Section 1305 of the Penal Code is amended to read:

1305. (a) A court shall in open court declare forfeited the undertaking of bail or the money or property deposited as bail if, without sufficient excuse, a defendant fails to appear for any of the following:

(1) Arraignment.

(2) Trial.

(3) Judgment.

(4) Any other occasion prior to the pronouncement of judgment if the defendant's presence in court is lawfully required.

(5) To surrender himself or herself in execution of the judgment after appeal.

However, the court shall not have jurisdiction to declare a forfeiture and the bail shall be released of all obligations under the bond if the case is dismissed or if no complaint is filed within 15 days from the date of arraignment.

(b) If the amount of the bond or money or property deposited exceeds four hundred dollars ($400), the clerk of the court shall, within 30 days of the forfeiture, mail notice of the forfeiture to the surety or the depositor of money posted instead of bail. At the same time, the court shall mail a copy of the forfeiture notice to the bail agent whose name appears on the bond. The clerk shall also execute a certificate of mailing of the forfeiture notice and shall place the certificate in the court's file. If the notice of forfeiture is required to be mailed pursuant to this section, the 180-day period provided for in this section shall be extended by a period of five days to allow for the mailing.

If the surety is an authorized corporate surety, and if the bond plainly displays the mailing address of the corporate surety and the bail agent, then notice of the forfeiture shall be mailed to the surety at that address and to the bail agent, and mailing alone to the surety or the bail agent shall not constitute compliance with this section.

The surety or depositor shall be released of all obligations under the bond if any of the following conditions apply:

(1) The clerk fails to mail the notice of forfeiture in accordance with this section within 30 days after the entry of the forfeiture.

(2) The clerk fails to mail the notice of forfeiture to the surety at the address printed on the bond.

(3) The clerk fails to mail a copy of the notice of forfeiture to the bail agent at the address shown on the bond.

(c) (1) If the defendant appears either voluntarily or in custody after surrender or arrest in court within 180 days of the date of forfeiture or within 180 days of the date of mailing of the notice if the notice is required under subdivision (b), the court shall, on its own motion at the time the defendant first appears in court on the case in which the forfeiture was entered, direct the order of forfeiture to be vacated and the bond exonerated. If the court fails to so act on its own motion, then the surety's or depositor's obligations under the bond shall be immediately vacated and the bond exonerated. An order vacating the forfeiture and exonerating the bond may be made on terms that are just and do not exceed the terms imposed in similar situations with respect to other forms of pretrial release.

(2) If, within the county where the case is located, the defendant is surrendered to custody by the bail or is arrested in the underlying case within the 180-day period, and is subsequently released from custody prior to an appearance in court, the court shall, on its own motion, direct the order of forfeiture to be vacated and the bond exonerated. If the court fails to so act on its own motion, then the surety's or depositor's obligations under the bond shall be immediately vacated and the bond exonerated. An order vacating the forfeiture and exonerating the bond may be made on terms that are just and do not exceed the terms imposed in similar situations with respect to other forms of pretrial release.

(3) If, outside the county where the case is located, the defendant is surrendered to custody by the bail or is arrested in the underlying case within the 180-day period, the court shall vacate the forfeiture and exonerate the bail.

(4) Except as provided in paragraphs (1) and (2), the court, in its discretion, may require that the bail provide 10 days' prior notice to the applicable prosecuting agency, as a condition precedent to vacating the forfeiture. The notice may be given by the surety insurer, the bail agent, the surety, or the depositor of money or property, any of whom may appear in person or through an attorney. A motion filed in a timely manner within the 180-day period may be heard within 30 days of the expiration of the 180-day period. The court may extend the 30-day period upon a showing of good cause.

In lieu of exonerating the bond, the court may order the bail reinstated and the defendant released on the same bond if both of the following conditions are met:

(A) The bail is given prior notice of the reinstatement.

(B) The bail has not surrendered the defendant.

(d) In the case of a permanent disability, the court shall direct the order of forfeiture to be vacated and the bail or money or property deposited as bail exonerated if, within 180 days of the date of forfeiture or within 180 days of the date of mailing of the notice if notice is required under subdivision (b), it is made apparent to the satisfaction of the court that both of the following conditions are met:

(1) The defendant is deceased or otherwise permanently unable to appear in the court due to illness, insanity, or detention by military or civil authorities.

(2) The absence of the defendant is without the connivance of the bail.

(e) In the case of a temporary disability, the court shall order the tolling of the 180-day period provided in this section during the period of temporary disability, provided that it appears to the satisfaction of the court that the following conditions are met:

(1) The defendant is temporarily disabled by reason of illness, insanity, or detention by military or civil authorities.

(2) Based upon the temporary disability, the defendant is unable to appear in court during the remainder of the 180-day period.

(3) The absence of the defendant is without the connivance of the bail.

The period of the tolling shall be extended for a reasonable period of time, at the discretion of the court, after the cessation of the disability to allow for the return of the defendant to the jurisdiction of the court.

(f) In all cases where a defendant is in custody beyond the jurisdiction of the court that ordered the bail forfeited, and the prosecuting agency elects not to seek extradition after being informed of the location of the defendant, the court shall vacate the forfeiture and exonerate the bond on terms that are just and do not exceed the terms imposed in similar situations with respect to other forms of pretrial release.

(g) In all cases of forfeiture where a defendant is not in custody and is beyond the jurisdiction of the state, is temporarily detained, by the bail agent, in the presence of a local law enforcement officer of the jurisdiction in which the defendant is located, and is positively identified by that law enforcement officer as the wanted defendant in an affidavit signed under penalty of perjury, and the prosecuting agency elects not to seek extradition after being informed of the location of the defendant, the court shall vacate the forfeiture and exonerate the bond on terms that are just and do not exceed the terms imposed in similar situations with respect to other forms of pretrial release.

(h) As used in this section, "arrest" includes a hold placed on the defendant in the underlying case while he or she is in custody on other charges.

CHAPTER 224

An act to amend Section 836 of the Penal Code, relating to peace officers.

[Approved by Governor August 3, 1998. Filed with
Secretary of State August 4, 1998.]

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 domestic violence protective or restraining order issued under the Family Code, Section 527.6 of the Code of Civil Procedure, Section 213.5 of the Welfare and Institutions Code, or Section 136.2 of this code, or of a domestic violence protective or restraining order issued by the court of another state, tribe, or territory 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 or the Domestic Violence Protection Order Registry maintained pursuant to Section 6380 of the Family Code that a true copy of the protective order has been registered, 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 Division 10 (commencing with Section 6200) 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.

(d) Notwithstanding paragraph (1) of subdivision (a), if a person commits an assault or battery upon his or her spouse, upon a person with whom he or she is cohabiting, or upon the parent of his or her child, a peace officer may arrest the person without a warrant where both of the following circumstances apply:

(1) The peace officer has reasonable cause to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

(2) The peace officer makes the arrest as soon as reasonable cause arises to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

(e) In addition to the authority to make an arrest without a warrant pursuant to paragraphs (1) and (3) of subdivision (a), a peace officer may, without a warrant, arrest a person for a violation of Section 12025 when all of the following apply:

(1) The officer has reasonable cause to believe that the person to be arrested has committed the violation of Section 12025.

(2) The violation of Section 12025 occurred within an airport, as defined in Section 21013 of the Public Utilities Code, in an area to which access is controlled by the inspection of persons and property.

(3) The peace officer makes the arrest as soon as reasonable cause arises to believe that the person to be arrested has committed the violation of Section 12025.

SEC. 1.1. 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 probable 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 probable 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 domestic violence protective or restraining order issued under the Family Code, Section 527.6 of the Code of Civil Procedure, Section 213.5 of the Welfare and Institutions Code, or Section 136.2 of this code, or of a domestic violence protective or restraining order issued by the court of another state, tribe, or territory and the peace officer has probable 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 or the Domestic Violence Protection Order Registry maintained pursuant to Section 6380 of the Family Code that a true copy of the protective order has been registered, 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 Division 10 (commencing with Section 6200) 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.

(d) Notwithstanding paragraph (1) of subdivision (a), if a person commits an assault or battery upon his or her spouse or former spouse, fiancé, fiancée, a person with whom he or she is cohabiting, a person with whom the defendant currently has, or has previously had, an engagement relationship, or a person who is the parent of his or her child, a peace officer may arrest the person without a warrant where both of the following circumstances apply:

(1) The peace officer has probable cause to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

(2) The peace officer makes the arrest as soon as probable cause arises to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

(e) In addition to the authority to make an arrest without a warrant pursuant to paragraphs (1) and (3) of subdivision (a), a peace officer may, without a warrant, arrest a person for a violation of Section 12025 when all of the following apply:

(1) The officer has reasonable cause to believe that the person to be arrested has committed the violation of Section 12025.

(2) The violation of Section 12025 occurred within an airport, as defined in Section 21013 of the Public Utilities Code, in an area to which access is controlled by the inspection of persons and property.

(3) The peace officer makes the arrest as soon as reasonable cause arises to believe that the person to be arrested has committed the violation of Section 12025.

SEC. 1.2. 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 domestic violence protective or restraining order issued under the Family Code, Section 527.6 of the Code of Civil Procedure, Section 213.5 of the Welfare and Institutions Code, Section 136.2 of this code, or paragraph (2) of subdivision (a) of Section 1203.097 of this code, or of a domestic violence protective or restraining order issued by the court of another state, tribe, or territory 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 or the Domestic Violence Protection Order Registry maintained pursuant to Section 6380 of the Family Code that a true copy of the protective order has been registered, 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 Division 10 (commencing with Section 6200) 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.

(d) Notwithstanding paragraph (1) of subdivision (a), if a suspect commits an assault or battery upon a current or former spouse, a current or former cohabitant as defined in Section 6209 of the Family Code, a person with whom the suspect is having or has had an engagement relationship, a person with whom the suspect has parented a child, or is presumed to have parented a child pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code), a child of the suspect, a child whose parentage by the suspect is the subject of an action under the Uniform Parentage Act, a child of a person in one of the above categories, or any other person related to the suspect by consanguinity or affinity within the second degree, a peace officer may arrest the suspect without a warrant where both of the following circumstances apply:

(1) The peace officer has reasonable cause to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

(2) The peace officer makes the arrest as soon as reasonable cause arises to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

(e) In addition to the authority to make an arrest without a warrant pursuant to paragraphs (1) and (3) of subdivision (a), a

peace officer may, without a warrant, arrest a person for a violation of Section 12025 when all of the following apply:

(1) The officer has reasonable cause to believe that the person to be arrested has committed the violation of Section 12025.

(2) The violation of Section 12025 occurred within an airport, as defined in Section 21013 of the Public Utilities Code, in an area to which access is controlled by the inspection of persons and property.

(3) The peace officer makes the arrest as soon as reasonable cause arises to believe that the person to be arrested has committed the violation of Section 12025.

SEC. 1.3. 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 probable 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 probable 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 domestic violence protective or restraining order issued under the Family Code, Section 527.6 of the Code of Civil Procedure, Section 213.5 of the Welfare and Institutions Code, Section 136.2 of this code, or paragraph (2) of subdivision (a) of Section 1203.097 of this code, or of a domestic violence protective or restraining order issued by the court of another state, tribe, or territory and the peace officer has probable 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 or the Domestic Violence Protection Order Registry maintained pursuant to Section 6380 of the Family Code that a true copy of the protective order has been registered, 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 Division 10 (commencing with Section 6200) 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.

(d) Notwithstanding paragraph (1) of subdivision (a), if a suspect commits an assault or battery upon a current or former spouse, fiancé, fiancée, a current or former cohabitant as defined in Section 6209 of the Family Code, a person with whom the suspect currently is having or has previously had an engagement relationship, a person with whom the suspect has parented a child, or is presumed to have parented a child pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code), a child of the suspect, a child whose parentage by the suspect is the subject of an action under the Uniform Parentage Act, a child of a person in one of the above categories, or any other person related to the suspect by consanguinity or affinity within the second degree, a peace officer may arrest the suspect without a warrant where both of the following circumstances apply:

(1) The peace officer has probable cause to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

(2) The peace officer makes the arrest as soon as probable cause arises to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

(e) In addition to the authority to make an arrest without a warrant pursuant to paragraphs (1) and (3) of subdivision (a), a peace officer may, without a warrant, arrest a person for a violation of Section 12025 when all of the following apply:

(1) The officer has reasonable cause to believe that the person to be arrested has committed the violation of Section 12025.

(2) The violation of Section 12025 occurred within an airport, as defined in Section 21013 of the Public Utilities Code, in an area to which access is controlled by the inspection of persons and property.

(3) The peace officer makes the arrest as soon as reasonable cause arises to believe that the person to be arrested has committed the violation of Section 12025.

SEC. 2. (a) Section 1.1 of this bill incorporates amendments to Section 836 of the Penal Code proposed by both this bill and AB 1767. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 836 of the Penal Code, and (3) SB 1470 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1767, in which case Sections 1, 1.2, and 1.3 of this bill shall not become operative.

(b) Section 1.2 of this bill incorporates amendments to Section 836 of the Penal Code proposed by both this bill and SB 1470. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 836 of the Penal Code, (3) AB 1767 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1470, in which case Sections 1, 1.1, and 1.3 of this bill shall not become operative.

(c) Section 1.3 of this bill incorporates amendments to Section 836 of the Penal Code proposed by this bill, AB 1767, and SB 1470. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1999, (2) all three bills amend Section 836 of the Penal Code, and (3) this bill is enacted after AB 1767 and SB 1470, in which case Sections 1, 1.1, and 1.2 of this bill shall not become operative.

CHAPTER 225

An act to add Section 2348 to the Family Code, relating to marriage.

[Approved by Governor August 3, 1998. Filed with Secretary of State August 4, 1998.]

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

SECTION 1. Section 2348 is added to the Family Code, to read:

2348. (a) In addition to the requirements of Section 103200 of the Health and Safety Code, the clerk of the superior court of each county shall report annually to the Judicial Council the number of judgments entered in the county during the preceding calendar year or other 12-month period as required by the Judicial Council for each of the following:

(1) Dissolution of marriage.

(2) Legal separation of the parties.

(3) Nullity of marriage.

(b) After the Judicial Branch Statistical Information System (JBSIS) is operational statewide, the clerk of the superior court of

each county shall also report annually to the Judicial Council the number of each of those judgments specified in paragraphs (1), (2), and (3) of subdivision (a), entered in the county during the preceding calendar year or other 12-month period as required by the Judicial Council, that include orders relating to child custody, visitation, or support.

(c) The Judicial Council shall include in its annual report to the Legislature on court statistics the number of each of the types of judgments entered in the state reported pursuant to subdivisions (a) and (b).

(d) The Judicial Council shall establish the applicable 12-month reporting period, the due date, and forms to be used, for submission of data pursuant to subdivisions (a) and (b). Until the Judicial Branch Statistical Information System (JBSIS) is operational statewide, the clerk of the superior court may report the data described in subdivision (a) using existing data collection systems, according to current Judicial Council statistical reporting regulations.

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

CHAPTER 226

An act to add Section 53.5 to the Revenue and Taxation Code, relating to taxation.

[Approved by Governor August 3, 1998. Filed with Secretary of State August 4, 1998.]

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

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

(a) The unique nature of certain mining processes used in extracting nonfuel minerals creates changes to the condition of real property that are difficult to categorize for property tax purposes as either fixtures or long-term capital improvements to real property.

(b) Because of the difficulties described in subdivision (a), it is necessary for the Legislature to create a special category for leach pads, tailings facilities, and settling ponds as separate appraisal units in order to more accurately reflect their declining value as an integral part of the mining process.

SEC. 2. Section 53.5 is added to the Revenue and Taxation Code, to read:

53.5. With respect to property that is subject to valuation as mining or mineral property, the initial base year value of a leach pad, tailing facility, or settling pond on that property shall be the full cash value of that leach pad, tailing facility, or settling pond as of the first lien date upon which that pad, facility, or pond is subject to assessment. Each leach pad, tailing facility, or settling pond shall be considered a separate appraisal unit for purposes of determining its taxable value on each lien date subsequent to the lien date upon which the initial base year value was determined for that pad, facility, or pond.

CHAPTER 227

An act to add Section 1771.9 to the Health and Safety Code, relating to continuing care.

[Approved by Governor August 3, 1998. Filed with Secretary of State August 4, 1998.]

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

SECTION 1. Section 1771.9 is added to the Health and Safety Code, to read:

1771.9. (a) (1) The Legislature finds and declares all of the following:

(A) The residents of continuing care retirement communities have a unique and valuable perspective on the operations of and services provided in the community in which they live.

(B) Resident input into decisions made by the provider is an important factor in creating an environment of cooperation, reducing conflict, and ensuring timely response and resolution to issues that may arise.

(C) Continuing care retirement communities are strengthened when residents know that their views are heard and respected.

(2) The Legislature encourages continuing care retirement communities to exceed the minimum resident participation requirements established by this section by, among other things, the following:

(A) Encouraging residents to form a resident council, assisting the residents, resident council, and resident association to keep informed about the operation of the community.

(B) Encouraging residents of a community or their elected representatives to select residents to participate as board members of the provider.

(C) Quickly and fairly resolving any dispute, claim, or grievance arising between a resident and the community.

(b) The governing body of a provider, or the designated representative of the provider, shall hold, at a minimum, semiannual meetings with the residents of the continuing care retirement community, or a committee of residents, for the purpose of the free discussion of subjects including, but not limited to, income, expenditures, and financial trends and issues as they apply to the community and proposed changes in policies, programs, and services. Nothing in this section precludes a provider from taking action or making a decision at any time, without regard to the meetings required under this subdivision.

(c) At least 30 days prior to the implementation of any increase in the monthly care fee, the designated representative of the provider shall convene a meeting, to which all residents shall be invited, for the purpose of discussing the reasons for the increase, the basis for determining the amount of the increase, and the data used for calculating the increase. This meeting may coincide with the semiannual meetings provided for in subdivision (b).

(d) Residents shall be provided at least 14 days' advance notice of each meeting provided for in subdivisions (b) and (c). The notice of, and the agenda for, the meeting shall be posted in a conspicuous place in the community at least 14 days prior to the meeting. The agenda and accompanying materials shall be available to residents of the community upon request.

(e) (1) The governing body of a provider that is not part of a multifacility organization with more than one continuing care retirement community in the state shall accept at least one resident of the continuing care retirement community it operates to participate as a nonvoting resident representative to the provider's governing body.

(2) In a multifacility organization having more than one continuing care retirement community in the state, the governing body of the multifacility organization shall elect either to have at least one nonvoting resident representative to the provider's governing body for each California-based continuing care retirement community the provider operates or to have a resident-elected committee composed of representatives of the residents of each California-based continuing care retirement community that the provider operates select or nominate at least one nonvoting resident representative to the provider's governing body for every three

California-based continuing care retirement communities or fraction thereof that the provider operates.

(f) (1) In order to encourage innovative and alternative models of resident involvement, a resident selected pursuant to subdivision (e) to participate as a resident representative to the provider's governing body may, at the option of the resident council or association, be selected in any one of the following ways:

(A) By a majority vote of the resident council or resident association of a provider or by a majority vote of a resident-elected committee of residents of a multifacility organization.

(B) If no resident council or resident association exists, any resident may organize a meeting of the majority of the residents of the community to select or nominate residents to represent them before the governing body.

(C) Any other method designated by the resident council or resident association.

(2) The residents' council, association, or organizing resident, or in the case of a multifacility organization, the resident-elected committee of residents, shall give residents of the community at least 30 days' advance notice of the meeting to select a resident representative and shall post the notice in a conspicuous place at the community.

(g) Except as provided in subdivision (h), the resident representative shall receive the same notice of board meetings, board packets, minutes, and other materials as members and shall be permitted to attend, speak, and participate in all meetings of the board.

(h) Notwithstanding subdivision (g), the governing body may exclude resident representatives from its executive sessions and from receiving board materials to be discussed during executive session. However, resident representatives shall be included in executive sessions and shall receive all board materials to be discussed during executive sessions related to discussions of the annual budgets, increases in monthly care fees, indebtedness, and expansion of new and existing facilities.

(i) The provider shall pay all reasonable travel costs for the resident representative.

(j) The provider shall disclose in writing the extent of resident involvement with the board to prospective residents.

(k) Nothing in this section shall prohibit a provider from exceeding the minimum resident participation requirements of this section by, for example, having more resident meetings or more resident representatives to the board than required or by having one or more residents on the provider's governing body who are selected with the active involvement of residents.

(*l*) On or before January 1, 2001, the Continuing Care Contracts Committee of the department established pursuant to Section 1777

shall evaluate and report to the Legislature on the implementation of this section.

CHAPTER 228

An act to add Section 41209 to the Education Code, relating to education.

[Approved by Governor August 3, 1998. Filed with Secretary of State August 4, 1998.]

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

SECTION 1. Section 41209 is added to the Education Code, to read:

41209. (a) Except as provided in subdivision (b), and notwithstanding any other provision of law, in any fiscal year when, in addition to any allocations required pursuant to Section 42238.42, an appropriation is made for the purposes of meeting the minimum funding requirements for public education, as set forth in Section 8 of Article XVI of the California Constitution, because these requirements were not sufficiently funded in a prior fiscal year, and the appropriation is apportioned on the basis of equal payments for each unit of each school district's average daily attendance, it is the intent of the Legislature that average daily attendance shall include the average daily attendance for regular education, adult education, and regional occupational programs and centers, as claimed in the school year in which the funding deficiency occurred. It is not the intent of the Legislature to interfere with, or to change, the application of Section 42238.42.

(b) Nothing in this section shall be construed to limit the flexibility of the Legislature or Governor to propose budget appropriations apportioned on the basis of equal payments for each unit of each school district's average daily attendance that exclude funds for adult education programs or regional occupational programs and centers.

(c) A district receiving funds distributed as described in subdivision (a) shall, consistent with Section 52501.5, use any funds allocated for average daily attendance of adult education programs or regional occupational centers or programs only for purposes of adult education programs or regional occupational centers or programs.

CHAPTER 229

An act to amend Section 3190 of the Family Code, relating to children.

[Approved by Governor August 3, 1998. Filed with Secretary of State August 4, 1998.]

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

SECTION 1. Section 3190 of the Family Code is amended to read:

3190. (a) The court may require parents or any other party 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, between the parent or parents and the child, between the parent or parents and another party seeking custody or visitation rights with the child, or between a party seeking custody or visitation rights 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) In determining whether a dispute, as described in paragraph (1) of subdivision (a), poses a substantial danger to the best interest of the child, the court shall consider, in addition to any other factors the court determines relevant, any history of domestic violence, as defined in Section 6211, within the past five years between the parents, between the parent or parents and the child, between the parent or parents and another party seeking custody or visitation rights with the child, or between a party seeking custody or visitation rights and the child.

(c) Subject to Section 3192, if the court finds that the financial burden created by the order for counseling does not otherwise jeopardize a party's other financial obligations, the court shall fix the cost and shall order the entire cost of the services to be borne by the parties in the proportions the court deems reasonable.

(d) 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.

(e) The court shall not order the parties to return to court upon the completion of counseling. Any 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.

CHAPTER 230

An act to amend Sections 924.4, 933, and 934 of the Penal Code, relating to grand juries.

[Approved by Governor August 3, 1998. Filed with Secretary of State August 4, 1998.]

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

SECTION 1. Section 924.4 of the Penal Code is amended to read:

924.4. Notwithstanding the provisions of Sections 924.1 and 924.2, any grand jury or, if the grand jury is no longer empaneled, the presiding or sole judge of the superior court, may pass on and provide the succeeding grand jury with any records, information, or evidence acquired by the grand jury during the course of any investigation conducted by it during its term of service, except any information or evidence that relates to a criminal investigation or that could form part or all of the basis for issuance of an indictment. Transcripts of testimony reported during any session of the grand jury shall be made available to the succeeding grand jury upon its request.

SEC. 2. Section 933 of the Penal Code is amended to read:

933. (a) Each grand jury shall submit to the presiding judge of the superior court a final report of its findings and recommendations that pertain to county government matters during the fiscal or calendar year. Final reports on any appropriate subject may be submitted to the presiding judge of the superior court at any time during the term of service of a grand jury. A final report may be submitted for comment to responsible officers, agencies, or departments, including the county board of supervisors, when applicable, upon finding of the presiding judge that the report is in compliance with this title. For 45 days after the end of the term, the foreperson and his or her designees shall, upon reasonable notice, be available to clarify the recommendations of the report.

(b) One copy of each final report, together with the responses thereto, found to be in compliance with this title shall be placed on file with the county clerk and remain on file in the office of the county clerk. The county clerk shall immediately forward a true copy of the report and the responses to the State Archivist who shall retain that report and all responses in perpetuity.

(c) No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and

recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations. All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices. One copy shall be placed on file with the applicable grand jury final report by, and in the control of the currently impaneled grand jury, where it shall be maintained for a minimum of five years.

(d) As used in this section "agency" includes a department.

SEC. 3. Section 934 of the Penal Code is amended to read:

934. (a) The grand jury may, at all times, request the advice of the court, or the judge thereof, the district attorney, the county counsel, or the Attorney General. Unless advice is requested, the judge of the court, or county counsel as to civil matters, shall not be present during the sessions of the grand jury.

(b) The Attorney General may grant or deny a request for advice from the grand jury. If the Attorney General grants a request for advice from the grand jury, the Attorney General shall fulfill that request within existing financial and staffing resources.

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

CHAPTER 231

An act to amend Section 20816 of the Government Code, relating to Public Employees' Retirement System.

[Approved by Governor August 3, 1998. Filed with
Secretary of State August 4, 1998.]

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

SECTION 1. Section 20816 of the Government Code is amended to read:

20816. Notwithstanding any other provision of this part, all assets of an employer shall be used in the determination of the employer contribution rate for the membership comprising the basis of the computation. Assets held shall be recognized over the same funding period used to amortize unfunded accrued actuarial obligations whether in excess of the accrued actuarial obligation or not, using the entry age normal funding method. On and after January 1, 1999, contracting agencies for which the actuarial value of assets exceed the present value of benefits as of the most recently completed valuation, as determined by the chief actuary, may request that the board transfer employer assets to member-accumulated contribution accounts to satisfy all member contributions required by this part. That transfer shall be over a 12-month period provided the actuarial value of assets exceed the present value of benefits. In determining the present value of benefits and the actuarial value of assets for purposes of this part, liabilities and assets attributed to the 1959 survivor allowance shall not be included.

For the purpose of this section, "employer" means any contracting agency, the state, or a school employer.

The actuarial report in the annual financial report shall also express the effect upon employer contribution rates of this section and of the recognition of net unrealized gains and losses.

CHAPTER 232

An act to amend Sections 33704, 38875, and 39762 of, and to amend the headings of Article 5.5 (commencing with Section 38251), Article 17 (commencing with Section 38522), Article 38 (commencing with Section 38881), and Article 39 (commencing with Section 38885) of Chapter 5 of, and Article 3 (commencing with Section 39721), Article 4 (commencing with Section 39731), and Article 7 (commencing with Section 39761) of Chapter 9 of, Part 3 of Division 15 of, the Food and Agricultural Code, relating to milk products, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 3, 1998. Filed with
Secretary of State August 4, 1998.]

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

SECTION 1. Section 33704 of the Food and Agricultural Code is amended to read:

33704. (a) Sections 33701, 33731, 33732, 33733, 33734, 33767, 33768, 33770, 33771, 33776, and 34593 do not apply to the manufacture of ice cream that is manufactured from ice cream mix, to frozen dairy dessert that is manufactured from frozen dairy dessert mix, to frozen dessert that is manufactured from frozen dessert mix, to frozen yogurt that is manufactured from frozen yogurt mix, or to nondairy frozen dessert that is manufactured from nondairy frozen dessert mix, if those products are manufactured in a freezing device from which those products are served directly in a semifrozen state, without packaging of any type, for consumption on the premises in or from rooms where food is served to the public.

Except for nondairy frozen dessert mix, all mixes so used shall be secured from a licensed manufacturer of milk products.

Ice cream mix, frozen yogurt mix, frozen dairy dessert mix, frozen dessert mix, and nondairy frozen dessert mix shall be manufactured into a semifrozen state without adulteration and freezing device salvage shall not be reused as a mix.

(b) A limited packaging permit may be issued by the secretary to a semifrozen (soft-serve) milk products plant for on-premises manufacture and packaging of hard frozen dairy products or hard frozen dairy product novelties. The permit may only be issued after the suitability of the facility for manufacture and packaging has been determined by the secretary. An annual onsite evaluation of compliance with the specific permit conditions shall be completed by the secretary prior to renewal of the limited packaging permit. A semifrozen milk products plant issued a limited packaging permit shall meet all of the following standards:

(1) The manufacturing and packaging of hard frozen dairy product novelties shall be done when the establishment is closed to the public.

(2) The hard frozen products shall only be sold to purchasers for consumption. No hard frozen product manufactured pursuant to the limited packaging permit shall be sold for resale.

(3) All frozen dairy product mixes used for the manufacture and packaging of hard frozen dairy product novelties shall be dispensed from single service containers sealed at the licensed milk products plant where processed and pasteurized. Reconstitution of dry mix or condensed mix is prohibited at a semifrozen milk products plant issued a limited packaging permit.

(4) Adequate facilities, consistent with recognized good manufacturing practices for the production and packaging of hard frozen dairy products, as determined by the secretary, shall be provided as a condition of the limited packaging permit. The facilities shall include, but are not limited to, adequate utensil and novelty

mold washing, sterilization and storage, and sufficient sanitary work area, including handwashing facilities, dedicated to the manufacture and packaging of hard frozen dairy product novelties. Sanitation guidelines consistent with good manufacturing and handling practices for retail food establishments manufacturing and packaging hard frozen dairy products in conformance with Part 110 (commencing with Section 110.3) of Title 21 of the Code of Federal Regulations shall be utilized by the secretary as a condition for issuance and renewal of the limited packaging permit.

(5) Each individually packaged hard frozen novelty shall be labeled with the name of the product and the name and address of the manufacturer.

(c) Nondairy frozen dessert mix shall be obtained from manufacturers licensed pursuant to Sections 38931 and 38934. Any dry or condensed mix to be reconstituted into freezable form shall be reconstituted on the premises in containers or equipment that meet the requirements of Sections 33763, 33764, 33765, and 33766. Any water used for reconstitution shall be treated in a manner to ensure a quality equal to potable pasteurized water. Upon reconstitution, the product shall be poured directly into the freezing unit or refrigerated at a temperature not to exceed 45 degrees Fahrenheit, and so maintained until frozen, or both.

(d) Where any retail establishment manufactures two or more of the products provided for under this section, each of those products shall be processed in a separate freezing device, and that freezing device shall be clearly identified as to the product being manufactured therein.

(e) The secretary may, by agreement with any approved milk inspection service, authorize the service to inspect and enforce requirements of this code applicable to the establishments covered by this section. Any agreement shall provide that the approved inspection service shall collect the applicable license fee for those establishments as provided in Sections 35221 and 38933. The fees so collected shall be retained by the approved service to cover its cost of enforcement, but 15 percent of the fees collected shall be remitted to the secretary to cover the cost of administration.

SEC. 2. The heading of Article 5.5 (commencing with Section 38251) of Chapter 5 of Part 3 of Division 15 of the Food and Agricultural Code is amended to read:

Article 5.5. Evaporated Reduced-Fat Milk or Condensed Reduced-Fat Milk

SEC. 3. The heading of Article 17 (commencing with Section 38522) of Chapter 5 of Part 3 of Division 15 of the Food and Agricultural Code is amended to read:

Article 17. Milk, Reduced-Fat Milk, Lowfat Milk, or Light Milk, and Nonfat Milk, Skim Milk, or Fat-Free Milk with Lactobacillus Acidophilus Culture Added

SEC. 4. Section 38875 of the Food and Agricultural Code is amended to read:

38875. Fruit kefir is kefir, reduced-fat kefir, lowfat or light (lite) kefir, or nonfat, skim, or fat-free kefir that contains not less than 8 percent by weight of clean, mature, sound fruit or its equivalent in other forms. The milk fat content of fruit kefir shall be not less than 2.8 percent. Lowfat or light (lite) fruit kefir shall contain not more than 1.2 percent milk fat. Reduced-fat kefir shall contain not more than 2 percent of milk fat. Nonfat, skim, or fat-free fruit kefir shall contain a maximum of twenty hundredths of 1 percent milk fat. Harmless coloring may be added to fruit kefir.

The milk fat content of fruit kefir made from goat milk shall not be less than 2.0 percent.

SEC. 5. The heading of Article 38 (commencing with Section 38881) of Chapter 5 of Part 3 of Division 15 of the Food and Agricultural Code is amended to read:

Article 38. Lactose Reduced Milk, Reduced-Fat Lactose Reduced Milk, Lactose Reduced Lowfat or Light Milk, and Lactose Reduced Nonfat, Skim, or Fat-Free Milk

SEC. 6. The heading of Article 39 (commencing with Section 38885) of Chapter 5 of Part 3 of Division 15 of the Food and Agricultural Code is amended to read:

Article 39. Fromage Frais or Soft Fresh Cheese

SEC. 7. The heading of Article 3 (commencing with Section 39721) of Chapter 9 of Part 3 of Division 15 of the Food and Agricultural Code is amended to read:

Article 3. UHT Reduced-Fat Milk and UHT Lowfat or Light Milk

SEC. 8. The heading of Article 4 (commencing with Section 39731) of Chapter 9 of Part 3 of Division 15 of the Food and Agricultural Code is amended to read:

Article 4. UHT Nonfat Milk, Skim Milk, or Fat-Free Milk

SEC. 9. The heading of Article 7 (commencing with Section 39761) of Chapter 9 of Part 3 of Division 15 of the Food and Agricultural Code is amended to read:

Article 7. UHT Flavored Reduced-Fat Milk and UHT Flavored Lowfat or Light Milk

SEC. 10. Section 39762 of the Food and Agricultural Code is amended to read:

39762. UHT flavored reduced-fat milk shall contain not more than 2.1 percent milk fat and not less than 8.25 percent milk solids-not-fat. UHT flavored lowfat or light (lite) milk shall contain not more than 1.2 percent milk fat and not less than 8.25 percent solids-not-fat.

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, 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 is an urgency statute necessary for the immediate preservation of the public peace, health, or 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 standards implemented by this act may apply, conforming changes may be made, and an erroneous statutory cross-reference may be corrected as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 233

An act to amend, repeal, and add Sections 703 and 1760.5 of, and to add and repeal Sections 703.1 and 1773 of, the Insurance Code, relating to insurance.

[Approved by Governor August 3, 1998. Filed with Secretary of State August 4, 1998.]

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

SECTION 1. Section 703 of the Insurance Code is amended to read:

703. Except when performed by a surplus line broker, the following acts are misdemeanors when done in this state:

(a) Acting as agent for a nonadmitted insurer in the transaction of insurance business in this state.

(b) In any manner advertising a nonadmitted insurer in this state.

(c) In any other manner aiding a nonadmitted insurer to transact insurance business in this state.

In addition to any penalty provided for commission of misdemeanors, a person violating any provision of this section shall forfeit to this state the sum of five hundred dollars ($500), together with one hundred dollars ($100) for each month or fraction thereof during which he or she continues the violation. This section shall not apply to advertising authorized by Section 703.1, subdivision (h) of Section 1760.5, or Section 1773.

(d) This section 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.

SEC. 1.5. Section 703 is added to the Insurance Code, to read:

703. Except when performed by a surplus line broker, the following acts are misdemeanors when done in this state:

(a) Acting as agent for a nonadmitted insurer in the transaction of insurance business in this state.

(b) In any manner advertising a nonadmitted insurer in this state.

(c) In any other manner aiding a nonadmitted insurer to transact insurance business in this state.

In addition to any penalty provided for commission of misdemeanors, a person violating any provision of this section shall forfeit to this state the sum of five hundred dollars ($500), together with one hundred dollars ($100) for each month or fraction thereof during which he or she continues the violation.

(d) This section shall become operative on January 1, 2002.

SEC. 2. Section 703.1 is added to the Insurance Code, to read:

703.1. (a) Any nonadmitted insurer that is on the list of eligible surplus line insurers issued by the commissioner pursuant to subdivision (f) of Section 1765.1 may advertise in all media, provided that all of the following apply: (1) the insurer's unlicensed status in California is disclosed in type of a size no smaller than any telephone number, address, or fax number appearing in the advertisement or solicitation, (2) the advertisement does not contain any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of his or her insurance business, that is untrue, deceptive, or misleading, and that is known, or that by the exercise of reasonable care should be known, to be untrue, deceptive, or misleading, (3) the advertisement does not contain any information about the nonadmitted insurer's premiums or rates, and (4) no specific product shall be advertised in a newspaper of general circulation, in a television or radio broadcast, or in a news magazine of general circulation.

(b) Any nonadmitted insurer that is not on the list of eligible surplus line insurers issued by the commissioner pursuant to

subdivision (f) of Section 1765.1 may advertise in all media, except for media that are targeted primarily at insureds or prospective insureds residing in California, provided that all of the conditions set forth in subdivision (a) are complied with and the advertisement does not contain any information about the insurer's specific products.

(c) A group of nonadmitted insurers may advertise to the same extent as a nonadmitted insurer, subject to the same requirements set forth in subdivision (a) or (b), as applicable.

(d) An eligible nonadmitted insurer that is a member of a group of insurers may include the name of the group in advertisements that are authorized by this section.

(e) The permission to advertise granted by this section shall not be deemed to authorize an insurer to do business in this state.

(f) This section 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.

SEC. 3. Section 1760.5 of the Insurance Code is amended to read:

1760.5. (a) The provisions of this chapter limiting the insurance that may be placed with nonadmitted insurers and requiring any report thereof shall not apply to:

(1) Reinsurance of the liability of an admitted insurer.

(2) Insurance against perils of navigation, transit or transportation upon hulls, freights or disbursements, or other shipowner interests; upon goods, wares, merchandise and all other personal property and interests therein, in course of exportation from or importation into any country, or transportation coastwise, including transportation by land or water from point of origin to final destination and including war risks; and marine builder's risks, drydocks and marine railways, including insurance of ship repairer's liability, and protection and indemnity insurance, but excluding insurance covering bridges or tunnels.

(3) Aircraft or spacecraft insurance.

(4) Insurance on property or operations of railroads engaged in interstate commerce.

(b) The insurance specified in paragraphs (2), (3), and (4) of subdivision (a) may be placed with a nonadmitted insurer only by and through a special lines' surplus line broker. The license of a special lines' surplus line broker shall be applied for and procured and shall be subject to the same fees for filing on issuance in the same manner as the license of a surplus line broker, except that in lieu of the bond required by Section 1765, there shall be delivered to the commissioner a bond in the form, amounts, and conditions specified in Sections 1663 and 1665 for an insurance broker and only one fee shall be collected from one person for both licenses. The licensee in respect to the business shall be subject to all the provisions of this chapter except Sections 1761, 1763, 1765.1, and 1775.5.

(c) The commissioner may address to any licensed special lines' surplus lines broker a written request for full and complete information respecting the financial stability, reputation, and integrity of any nonadmitted insurer with whom the licensee has dealt or proposes to deal in the transaction of insurance specified in paragraphs (2), (3), or (4) of subdivision (a). The licensee so addressed shall promptly furnish in written or printed form so much of the information requested as he or she can produce together with a signed statement identifying the same and giving reasons for omissions, if any. After due examination of the information and accompanying statement, the commissioner may, if he or she believes it to be in the public interest, order in writing the licensee to place no further insurance business on property located or operations conducted within or on the lives of persons who are residents of this state with that nonadmitted insurer on behalf of any person. Any placement with that nonadmitted insurer made by a licensee after receipt of the order is a violation of this chapter. The commissioner may issue an order if he or she finds that a nonadmitted insurer with whom the licensee has dealt or proposes to deal in the transaction of insurance is in an unsound financial condition, is disreputable, or is lacking in integrity. The order shall also include notice of a hearing to be held at a time and place fixed therein, which shall be not less than 20 nor more than 30 days from service of the order upon the licensee.

(d) The commissioner may, in respect to business written or placed under the provisions of this section, require information and reports thereof that the commissioner considers necessary, convenient, or advisable.

(e) Each placing of insurance in violation of this chapter is a misdemeanor.

(f) The commissioner may revoke, suspend, or deny any license granted pursuant to this code in accordance with the procedure provided in Article 13 (commencing with Section 1737) of Chapter 5, or any certificate of authority granted pursuant to this code in accordance with the procedure provided in Section 704 whenever the commissioner finds that the licensee or holder of the certificate has committed a violation of this section.

(g) The premium for insurance placed by or through a special lines' surplus line broker pursuant to this section shall not be subject to the tax imposed upon the broker based upon gross premiums paid for insurance placed under authority conferred by the license.

(h) Special lines' surplus line brokers may advertise and solicit in conformity with Section 1773, except that they are not subject to the limitation that any nonadmitted insurer's name appearing in the advertisements or solicitations must be authorized to accept placements under Section 1765.1.

(i) This section 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.

SEC. 3.5. Section 1760.5 is added to the Insurance Code, to read:

1760.5. (a) The provisions of this chapter limiting the insurance that may be placed with nonadmitted insurers and requiring any report thereof shall not apply to:

(1) Reinsurance of the liability of an admitted insurer.

(2) Insurance against perils of navigation, transit or transportation upon hulls, freights or disbursements, or other shipowner interests; upon goods, wares, merchandise and all other personal property and interests therein, in course of exportation from or importation into any country, or transportation coastwise, including transportation by land or water from point of origin to final destination and including war risks; and marine builder's risks, drydocks and marine railways, including insurance of ship repairer's liability, and protection and indemnity insurance, but excluding insurance covering bridges or tunnels.

(3) Aircraft or spacecraft insurance.

(4) Insurance on property or operations of railroads engaged in interstate commerce.

(b) The insurance specified in paragraphs (2), (3), and (4) of subdivision (a) may be placed with a nonadmitted insurer only by and through a special lines' surplus line broker. The license of a special lines' surplus line broker shall be applied for and procured and shall be subject to the same fees for filing on issuance in the same manner as the license of a surplus line broker, except that in lieu of the bond required by Section 1765, there shall be delivered to the commissioner a bond in the form, amounts, and conditions specified in Sections 1663 and 1665 for an insurance broker and only one fee shall be collected from one person for both licenses. The licensee in respect to the business shall be subject to all the provisions of this chapter except Sections 1761, 1763, 1765.1, and 1775.5.

(c) The commissioner may address to any licensed special lines' surplus lines broker a written request for full and complete information respecting the financial stability, reputation, and integrity of any nonadmitted insurer with whom the licensee has dealt or proposes to deal in the transaction of insurance specified in paragraphs (2), (3), or (4) of subdivision (a). The licensee so addressed shall promptly furnish in written or printed form so much of the information requested as he or she can produce together with a signed statement identifying the same and giving reasons for omissions, if any. After due examination of the information and accompanying statement, the commissioner may, if he or she believes it to be in the public interest, order in writing the licensee to place no further insurance business on property located or operations conducted within or on the lives of persons who are residents of this state with that nonadmitted insurer on behalf of any

person. Any placement with that nonadmitted insurer made by a licensee after receipt of the order is a violation of this chapter. The commissioner may issue an order if he or she finds that a nonadmitted insurer with whom the licensee has dealt or proposes to deal in the transaction of insurance is in an unsound financial condition, is disreputable, or is lacking in integrity. The order shall also include notice of a hearing to be held at a time and place fixed therein, which shall be not less than 20 nor more than 30 days from service of the order upon the licensee.

(d) The commissioner may, in respect to business written or placed under the provisions of this section, require information and reports thereof that the commissioner considers necessary, convenient, or advisable.

(e) Each placing of insurance in violation of this chapter is a misdemeanor.

(f) The commissioner may revoke, suspend, or deny any license granted pursuant to this code in accordance with the procedure provided in Article 13 (commencing with Section 1737) of Chapter 5, or any certificate of authority granted pursuant to this code in accordance with the procedure provided in Section 704 whenever the commissioner finds that the licensee or holder of the certificate has committed a violation of this section.

(g) The premium for insurance placed by or through a special lines' surplus line broker pursuant to this section shall not be subject to the tax imposed upon the broker based upon gross premiums paid for insurance placed under authority conferred by the license.

(h) This section shall become operative on January 1, 2002.

SEC. 4. Section 1773 is added to the Insurance Code, to read:

1773. (a) Surplus line brokers may advertise and solicit using print, electronic media, direct mail, and all other advertising or marketing media. These advertisements and solicitations may include a description of nonadmitted insurance products available through the surplus line broker, and may include the name of any nonadmitted insurer, provided that all of the following apply: (a) the insurer is authorized to accept placements from the surplus line broker pursuant to Section 1765.1, (b) a nonadmitted insurer's name is not used in connection with any nonadmitted insurance product of that insurer, (c) the unlicensed status of the insurer or of the insurance products is disclosed in type of a size no smaller than any telephone number, address, or fax number appearing in the advertisement or solicitation, and (d) the advertisement or solicitation does not contain any assertion, representation, or statement with respect to the business of insurance, or with respect to any person in the conduct of his or her insurance business, that is untrue, deceptive, or misleading, and that is known, or that by the exercise of reasonable care should be known, to be untrue, deceptive, or misleading. If the insurance is available from an eligible nonadmitted insurer that is a member of a group of insurers,

advertisements and solicitations in accordance with this section may include the name of the group. A surplus line broker's advertisements and solicitations shall not include any information about a nonadmitted insurer's premiums or rates.

(b) This section 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 234

An act to add Chapter 2.97 (commencing with Section 7286.70) to Part 1.7 of Division 2 of the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 3, 1998. Filed with Secretary of State August 4, 1998.]

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

SECTION 1. Chapter 2.97 (commencing with Section 7286.70) is added to Part 1.7 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 2.97. PLACERVILLE TRANSACTIONS AND USE TAX

7286.70. (a) Subject to subdivision (b), the City of Placerville may levy a transactions and use tax at a rate of either 0.125 or 0.25 percent, if an ordinance or resolution proposing that tax is approved by a majority vote of all of the members of the city council and the tax is approved by a two-thirds vote of qualified voters of the city voting in an election on the issue.

(b) (1) Any transactions and use tax imposed pursuant to this section shall be levied pursuant to Part 1.6 (commencing with Section 7251).

(2) The net revenues derived from a tax imposed pursuant to this section shall be expended only for police services, and shall be so expended in addition to, and shall not supplant, the level of funding for police services that was provided from other revenue sources by the City of Placerville for the 1997–98 fiscal year. "Police services" shall be defined in the ordinance or resolution proposing the transactions and use tax.

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 uniquely severe fiscal difficulties being experienced

by the City of Placerville in providing that level of police services that will adequately protect the public.

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 in a timely manner to the City of Placerville that fiscal authority that is essential to resolve immediate and pressing issues with respect to local police services, it is necessary that this act take effect immediately.

CHAPTER 235

An act to amend Section 987.9 of, and to amend and renumber Section $969^1/_2$ of, the Penal Code, relating to criminal procedure.

[Approved by Governor August 3, 1998. Filed with Secretary of State August 4, 1998.]

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

SECTION 1. Section $969^1/_2$ of the Penal Code is amended and renumbered to read:

969.5. (a) Whenever it shall be discovered that a pending complaint to which a plea of guilty has been made under Section 859a does not charge all prior felonies of which the defendant has been convicted either in this state or elsewhere, the complaint may be forthwith amended to charge the prior conviction or convictions and the amendments may and shall be made upon order of the court. The defendant shall thereupon be arraigned before the court to which the complaint has been certified and shall be asked whether he or she has suffered the prior conviction. If the defendant enters a denial, his or her answer shall be entered in the minutes of the court. The refusal of the defendant to answer is equivalent to a denial that he or she has suffered the prior conviction.

(b) Except as provided in subdivision (c), the question of whether or not the defendant has suffered the prior conviction shall be tried by a jury impaneled for that purpose unless a jury is waived, in which case it may be tried by the court.

(c) Notwithstanding the provisions of subdivision (b), the question of whether the defendant is the person who has suffered the prior conviction shall be tried by the court without a jury.

SEC. 2. Section 987.9 of the Penal Code is amended to read:

987.9. (a) In the trial of a capital case or a case under subdivision (a) of Section 190.05 the indigent defendant, through the defendant's counsel, may request the court for funds for the specific payment of investigators, experts, and others for the preparation or presentation

of the defense. The application for funds shall be by affidavit and shall specify that the funds are reasonably necessary for the preparation or presentation of the defense. The fact that an application has been made shall be confidential and the contents of the application shall be confidential. Upon receipt of an application, a judge of the court, other than the trial judge presiding over the case in question, shall rule on the reasonableness of the request and shall disburse an appropriate amount of money to the defendant's attorney. The ruling on the reasonableness of the request shall be made at an in camera hearing. In making the ruling, the court shall be guided by the need to provide a complete and full defense for the defendant.

(b) The Controller shall not reimburse any county for costs that exceed Board of Control standards for travel and per diem expenses. The Controller may reimburse extraordinary costs in unusual cases if the county provides sufficient documentation of the need for those expenditures.

At the termination of the proceedings, the attorney shall furnish to the court a complete accounting of all moneys received and disbursed pursuant to this section.

(c) The Controller 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, controlling reimbursements under this section. The regulations shall consider compensation for investigators, expert witnesses, and other expenses that may or may not be reimbursable pursuant to this section. Notwithstanding the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the Controller shall follow any regulations adopted until final approval by the Office of Administrative Law.

(d) The confidentiality provided in this section shall not preclude any court from providing the Attorney General with access to documents protected by this section when the defendant raises an issue on appeal or collateral review where the recorded portion of the record, created pursuant to this section, relates to the issue raised. When the defendant raises that issue, the funding records, or relevant portions thereof, shall be provided to the Attorney General at the Attorney General's request. In such a case, the documents shall remain under seal and their use shall be limited solely to the pending proceeding.

CHAPTER 236

An act to add Section 8961.13 to the Health and Safety Code, relating to dead bodies.

[Approved by Governor August 3, 1998. Filed with Secretary of State August 4, 1998.]

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

SECTION 1. Section 8961.13 is added to the Health and Safety Code, to read:

8961.13. (a) Notwithstanding any other provision of this part, a district may acquire, construct, improve, maintain, and repair a columbarium for the placement of cremated remains.

(b) A district that possesses a columbarium pursuant to this section may sell the burial rights in niches to residents, taxpayers, and nonresidents, who are otherwise authorized by this part to purchase burial rights in a cemetery lot or plot of the district.

(c) A district that sells burial rights in niches pursuant to subdivision (b) shall establish a rate pursuant to Section 8961.4.

CHAPTER 237

An act to amend Section 1393.5 of the Labor Code, relating to employment.

[Approved by Governor August 3, 1998. Filed with Secretary of State August 4, 1998.]

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

SECTION 1. Section 1393.5 of the Labor Code is amended to read:

1393.5. (a) Notwithstanding any other provision of this article or Article 2 (commencing with Section 49110) of Chapter 7 of Part 27 of the Education Code, an exemption issued pursuant to Section 1393 may authorize the employment of a minor, who is enrolled in any public or private school in the County of Lake, for more than 48 hours but not more than 60 hours in any one week, only upon prior written approval by the Lake County Board of Education.

(b) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2002, deletes or extends that date.

CHAPTER 238

An act to amend Section 66025 of, and to add Section 70901.1 to, the Education Code, relating to postsecondary education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 3, 1998. Filed with Secretary of State August 4, 1998.]

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

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

(1) Applications for admission to institutions of higher education that are electronically submitted accomplish all of the following:

(A) Make the admission process more accessible to students.

(B) Reduce the duplication of efforts when a student applies to more than one institution of higher education.

(C) Save paper.

(D) Simplify the preparation of applications by using fill-in boxes.

(2) Both the University of California and the California State University have demonstrated enormous success with their online application process.

(3) The Association of Independent California Colleges and Universities will begin online applications in 1998.

(4) Current regulations adopted by the Board of Governors of the California Community Colleges preclude the use of electronic applications for admission to the California Community Colleges.

(b) Therefore, it is the intent of the Legislature to encourage the exploration and expansion of alternative application processes for admission to community colleges.

SEC. 2. Section 66025 of the Education Code is amended to read:

66025. (a) Systemwide fees charged to resident undergraduate students at the University of California and the California State University shall be reduced for the 1998–99 fiscal year by 5 percent below the level charged during the 1997–98 fiscal year, and the systemwide fees charged to those students for the 1999–2000 fiscal year shall be the same as the systemwide fees established for those students for the 1998–99 fiscal year. Systemwide fees charged to resident graduate students and resident students pursuing a course of study leading to a professional degree at the University of California and the California State University for each of the 1998–99 and 1999–2000 fiscal years shall be established at the same level as established for those resident students for the 1997–98 fiscal year.

Notwithstanding Section 76300, the fee per unit per semester charged to resident undergraduate students at the California Community Colleges during each of the 1998–99 and 1999–2000 fiscal years shall be twelve dollars ($12), beginning in the academic year commencing in the fall of 1998.

(b) No provision of this section 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.

SEC. 3. Section 70901.1 is added to the Education Code, to read:

70901.1. (a) The Board of Governors of the California Community Colleges shall adopt regulations that permit the governing board of a community college district to allow applications for admission to be submitted electronically. The regulations shall

require that applicants be informed of the relative security of the information they submit electronically.

(b) Upon adoption of a standard of encrypted digital signatures by the Secretary of State, the Board of Governors of the California Community Colleges shall adopt regulations that permit the governing board of a community college district to allow student residency determination forms to be submitted electronically.

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 fee reduction implemented pursuant to Section 66025 of the Education Code becomes effective in the academic year commencing in the fall of 1998, and that regulations are adopted as soon as possible to permit applications for admission to community colleges to be submitted electronically, it is necessary that this act take effect immediately.

CHAPTER 239

An act to add Section 1308.8 to the Labor Code, relating to employees.

[Approved by Governor August 3, 1998. Filed with Secretary of State August 4, 1998.]

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

SECTION 1. Section 1308.8 is added to the Labor Code, to read:

1308.8. (a) No infant under the age of one month may be employed on any motion picture set or location unless a licensed physician and surgeon who is board-certified in pediatrics provides written certification that the infant is at least 15 days old and, in his or her medical opinion, the infant was carried to full term, was of normal birth weight, is physically capable of handling the stress of filmmaking, and the infant's lungs, eyes, heart, and immune system are sufficiently developed to withstand the potential risks.

(b) Any parent, guardian, or employer of a minor, and any officer or agent of an employer of a minor, who directly or indirectly violates subdivision (a), or who causes or suffers a violation of subdivision (a), with respect to that minor, is guilty of a misdemeanor punishable by a fine of not less than two thousand five hundred dollars ($2,500) nor more than five thousand dollars ($5,000), by imprisonment in the county jail for not more than 60 days, or by both that fine and imprisonment.

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 that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 240

An act to amend Sections 116.220 and 116.570 of the Code of Civil Procedure, relating to small claims court.

[Approved by Governor August 3, 1998. Filed with Secretary of State August 4, 1998.]

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

SECTION 1. The Legislature finds and declares that it is necessary and appropriate to increase the jurisdictional limit in the small claims court for claims against defendant guarantors who charge a fee for their guarantor or surety services in order to provide the parties with a more economical means of litigating these types of disputes, and to provide the benefits of the contract to the person paying a fee for the guarantor or surety services.

SEC. 2. Section 116.220 of the Code of Civil Procedure is amended to read:

116.220. (a) The small claims court shall have jurisdiction in the following actions:

(1) Except as provided in subdivisions (c), (e), and (f), for recovery of money, if the amount of the demand does not exceed five thousand dollars ($5,000).

(2) Except as provided in subdivisions (c), (e), and (f), to enforce payment of delinquent unsecured personal property taxes in an amount not to exceed five thousand dollars ($5,000), if the legality of the tax is not contested by the defendant.

(3) To issue the writ of possession authorized by Sections 1861.5 and 1861.10 of the Civil Code if the amount of the demand does not exceed five thousand dollars ($5,000).

(4) To confirm, correct, or vacate a fee arbitration award not exceeding five thousand dollars ($5,000) between an attorney and client that is binding or has become binding, or to conduct a hearing de novo between an attorney and client after nonbinding arbitration of a fee dispute involving no more than five thousand dollars ($5,000)

in controversy, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code.

(b) In any action seeking relief authorized by subdivision (a), the court may grant equitable relief in the form of rescission, restitution, reformation, and specific performance, in lieu of, or in addition to, money damages. The court may issue a conditional judgment. The court shall retain jurisdiction until full payment and performance of any judgment or order.

(c) Notwithstanding subdivision (a), the small claims court shall have jurisdiction over a defendant guarantor who is required to respond based upon the default, actions, or omissions of another, only if the demand does not exceed (1) two thousand five hundred dollars ($2,500), or (2) on and after January 1, 2000, four thousand dollars ($4,000), if the defendant guarantor charges a fee for its guarantor or surety services.

(d) In any case in which the lack of jurisdiction is due solely to an excess in the amount of the demand, the excess may be waived, but any waiver shall not become operative until judgment.

(e) Notwithstanding subdivision (a), in any action filed by a plaintiff incarcerated in a Department of Corrections facility or a Youth Authority facility, the small claims court shall have jurisdiction over a defendant only if the plaintiff has alleged in the complaint that he or she has exhausted his or her administrative remedies against that department, including compliance with Sections 905.2 and 905.4 of the Government Code. The final administrative adjudication or determination of the plaintiff's administrative claim by the department may be attached to the complaint at the time of filing in lieu of that allegation.

(f) In any action governed by subdivision (e), if the plaintiff fails to provide proof of compliance with the requirements of subdivision (e) at the time of trial, the judicial officer shall, at his or her discretion, either dismiss the action or continue the action to give the plaintiff an opportunity to provide such proof.

(g) For purposes of this section, "department" includes an employee of a department against whom a claim has been filed under this chapter arising out of his or her duties as an employee of that department.

SEC. 3. Section 116.570 of the Code of Civil Procedure is amended to read:

116.570. (a) Any party may submit a written request for postponement of a hearing date.

(1) The written request may be made either by letter or on a form adopted or approved by the Judicial Council.

(2) On the date of making the written request, the requesting party shall mail or personally deliver a copy to each of the other parties to the action.

(3) (A) If the court finds that the interests of justice would be served by postponing the hearing, the court shall postpone the

hearing, and shall notify all parties by mail of the new hearing date, time, and place.

(B) On one occasion, upon the written request of a defendant guarantor, the court shall postpone the hearing for at least 30 days, and the court shall take this action without a hearing. Nothing in this subparagraph, however, shall limit the discretion of the court to grant additional postponements under subparagraph (A).

(4) The court shall provide a prompt response by mail to any person making a written request for postponement of a hearing date under this subdivision.

(b) If service of the claim and order upon the defendant is not completed within the number of days before the hearing date required by subdivision (b) of Section 116.340, and the defendant has not personally appeared and has not requested a postponement, the court shall postpone the hearing for at least 15 days. If a postponement is ordered under this subdivision, the clerk shall promptly notify all parties by mail of the new hearing date, time, and place.

(c) Nothing in this section limits the inherent power of the court to order postponements of hearings in appropriate circumstances.

(d) A fee of ten dollars ($10) shall be charged and collected for the filing of a request for postponement and rescheduling of a hearing date after timely service pursuant to subdivision (b) of Section 116.340 has been made upon the defendant.

CHAPTER 241

An act to add Sections 462, 12517.5, 34501.17, and 34520.5 to the Vehicle Code, relating to vehicles.

[Approved by Governor August 3, 1998. Filed with Secretary of State August 4, 1998.]

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

SECTION 1. Section 462 is added to the Vehicle Code, to read:

462. A "paratransit vehicle" is a passenger vehicle, other than a bus, schoolbus, school pupil activity bus, youth bus, general public paratransit vehicle, or taxicab that is both of the following:

(a) (1) Operated for hire by a business, nonprofit organization, or the state, or a political subdivision of the state utilizing drivers who receive compensation for their services and who spend a majority of their workweek operating a passenger vehicle.

(2) For the purposes of this subdivision, compensation does not include reimbursement to volunteer drivers of the cost of providing transportation services at a rate not greater than that approved by the United States Internal Revenue Service for volunteers.

(3) For the purposes of this subdivision, "for hire" means that the entity providing transportation services is compensated for the transportation under contract or agreement.

(b) Regularly used to provide transportation services to any of the following:

(1) Handicapped persons, as defined in Section 99206.5 of the Public Utilities Code.

(2) Persons with a developmental disability, as defined in subdivision (a) of Section 4512 of the Welfare and Institutions Code.

(3) Individuals with disabilities who are determined to be eligible for complementary paratransit services under Title II of the Americans with Disabilities Act of 1990 (P.L. 101-336).

(4) Persons who are 55 years of age or older.

SEC. 2. Section 12517.5 is added to the Vehicle Code, to read:

12517.5. A person who is employed as a driver of a paratransit vehicle shall not operate that vehicle unless the person meets both of the following requirements:

(a) Has in his or her immediate possession a valid driver's license of a class appropriate to the vehicle driven.

(b) Successfully completes, during each calendar year, four hours of training administered by, or at the direction of, his or her employer or the employer's agent on the safe operation of paratransit vehicles and four hours of training on the special transportation needs of the persons he or she is employed to transport.

This subdivision may be satisfied if the driver receives transportation training or a certificate, or both, pursuant to Section 38157, 38158, 38161, 38162, or 38165 of the Education Code or pursuant to Section 4648 of the Welfare and Institutions Code.

The employer shall maintain a record of the current training received by each driver in his or her employ and shall present that record on demand to any authorized representative of the Department of the California Highway Patrol.

SEC. 3. Section 34501.17 is added to the Vehicle Code, to read:

34501.17. (a) All paratransit vehicles shall be regularly and systematically inspected, maintained, and lubricated by the owner or operator in accordance with the manufacturer's recommendations, or more often if necessary to ensure the safe operating condition of the vehicle. The maintenance shall include, at a minimum, in-depth inspection of the vehicle's brake system, steering components, lighting system, and wheels and tires, to be performed at intervals in accordance with the manufacturer's recommendations.

(b) All owners or operators of paratransit vehicles shall document each systematic inspection, maintenance, and lubrication and repair performed for each vehicle subject to this section. Required records shall include service performed, the name of the person performing the service, the date that the service was performed, and the odometer reading of the vehicle at the time of the service. The records shall be maintained for the period that the vehicle is in

service at the place of business in this state of the owner or operator of the vehicle, and shall be presented upon demand to any authorized representative of the department. The odometer of a paratransit vehicle shall be maintained in proper working order.

SEC. 4. Section 34520.5 is added to the Vehicle Code, to read:

34520.5. (a) All employers of drivers who operate paratransit vehicles, and the drivers of those vehicles, shall participate in a program consistent with the controlled substances and alcohol use and testing requirements of the United States Secretary of Transportation as set forth in Part 382 (commencing with Section 382.101), Part 653 (commencing with Section 653.1), or Part 654 (commencing with Section 654.1) of Title 49 of the Code of Federal Regulations.

(b) Section 34520 is applicable to any controlled substances or alcohol testing program undertaken under this section.

(c) The employer of a paratransit vehicle driver shall participate in the pull notice system defined in Section 1808.1.

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 that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 242

An act to amend Section 8107 of the Commercial Code, and to add Part 3 (commencing with Section 5500) to Division 5 of the Probate Code, relating to the Uniform TOD Security Registration Act.

[Approved by Governor August 3, 1998. Filed with Secretary of State August 4, 1998.]

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

SECTION 1. Section 8107 of the Commercial Code is amended to read:

8107. (a) "Appropriate person" means any of the following:

(1) With respect to an endorsement, the person specified by a security certificate or by an effective special endorsement to be entitled to the security.

(2) With respect to an instruction, the registered owner of an uncertificated security.

(3) With respect to an entitlement order, the entitlement holder.

(4) If the person designated in paragraph (1), (2), or (3) is deceased, the designated person's successor taking under other law or the designated person's personal representative acting for the estate of the decedent, or the beneficiary of a security, as defined in subdivision (d) of Section 5501 of the Probate Code, registered in beneficiary form, as defined in subdivision (a) of Section 5501 of the Probate Code, if the beneficiary has survived the death of the registered owner or all registered owners.

(5) If the person designated in paragraph (1), (2), or (3) lacks capacity, the designated person's guardian, conservator, or other similar representative who has power under other law to transfer the security or financial asset.

(b) An endorsement, instruction, or entitlement order is effective if it is made by any of the following:

(1) It is made by the appropriate person.

(2) It is made by a person who has power under the law of agency to transfer the security or financial asset on behalf of the appropriate person, including, in the case of an instruction or entitlement order, a person who has control under paragraph (2) of subdivision (c) or paragraph (2) of subdivision (d) of Section 8106.

(3) The appropriate person has ratified it or is otherwise precluded from asserting its ineffectiveness.

(c) An endorsement, instruction, or entitlement order made by a representative is effective even if:

(1) The representative has failed to comply with a controlling instrument or with the law of the state having jurisdiction of the representative relationship, including any law requiring the representative to obtain court approval of the transaction.

(2) The representative's action in making the endorsement, instruction, or entitlement order or using the proceeds of the transaction is otherwise a breach of duty.

(d) If a security is registered in the name of or specially endorsed to a person described as a representative, or if a securities account is maintained in the name of a person described as a representative, an endorsement, instruction, or entitlement order made by the person is effective even though the person is no longer serving in the described capacity.

(e) Effectiveness of an endorsement, instruction, or entitlement order is determined as of the date the endorsement, instruction, or entitlement order is made, and an endorsement, instruction, or entitlement order does not become ineffective by reason of any later change of circumstances.

SEC. 2. Part 3 (commencing with Section 5500) is added to Division 5 of the Probate Code, to read:

PART 3. UNIFORM TOD SECURITY REGISTRATION ACT

5500. (a) This part shall be known as and may be cited as the Uniform TOD Security Registration Act.

(b) This part shall be liberally construed and applied to promote its underlying purposes and policy.

(c) The underlying purposes and policy of this act are to (1) encourage development of a title form for use by individuals that is effective, without probate and estate administration, for transferring property at death in accordance with directions of a deceased owner of a security as included in the title form in which the security is held and (2) protect issuers offering and implementing the new title form.

(d) Unless displaced by the particular provisions of this part, the principles of law and equity supplement its provisions.

5501. In this part:

(a) "Beneficiary form" means a registration of a security that indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

(b) "Register," including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

(c) "Registering entity" means a person who originates or transfers a security title by registration, and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(d) "Security" means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, and a security account.

(e) "Security account" means (1) a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death, or (2) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

5502. Only individuals whose registration of a security shows sole ownership by one individual or multiple ownership by two or more individuals with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form hold as joint tenants with right of survivorship, as tenants by the entireties, or as owners of community property held in survivorship form, and not as tenants in common.

5503. A security may be registered in beneficiary form if the form is authorized by this or a similar statute of the state of organization of the issuer or registering entity, the location of the registering entity's principal office, the office of its transfer agent or its office making the registration, or by this or a similar statute of the law of the state listed as the owner's address at the time of registration. A registration governed by the law of a jurisdiction in which this or similar legislation is not in force or was not in force when a registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law.

5504. A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.

5505. Registration in beneficiary form may be shown by the words "transfer on death" or the abbreviation "TOD," or by the words "pay on death" or the abbreviation "POD," after the name of the registered owner and before the name of a beneficiary.

5506. The designation of a TOD beneficiary on a registration in beneficiary form has no effect on ownership until the owner's death. A registration of a security in beneficiary form may be canceled or changed at any time by the sole owner or all then surviving owners without the consent of the beneficiary.

5507. On death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survive the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.

5508. (a) A registering entity is not required to offer or to accept requests for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by this part.

(b) By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented as provided in this part.

(c) A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of the security in accordance with Section 5507 and does so in good faith reliance (1) on the registration, (2) on this part, and (3) on information provided to it by affidavit of the personal

representative of the deceased owner, or by the surviving beneficiary or the surviving beneficiary's representatives, or other information available to the registering entity. The protections of this part do not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity shall affect its right to protection under this part.

(d) The protection provided by this part to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.

5509. (a) Any transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and this part and is not testamentary.

(b) This part does not limit the rights of a surviving spouse or creditors of security owners against beneficiaries and other transferees under other laws of this state.

5510. (a) A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests for (1) registrations in beneficiary form, and (2) implementation of registrations in beneficiary form, including requests for cancellation of previously registered TOD beneficiary designations and requests for reregistration to effect a change of beneficiary.

(b) The terms and conditions established pursuant to subdivision (a) may provide for (1) proving death, (2) avoiding or resolving any problems concerning fractional shares, (3) designating primary and contingent beneficiaries, and (4) substituting a named beneficiary's descendants to take in the place of the named beneficiary in the event of the beneficiary's death. Substitution may be indicated by appending to the name of the primary beneficiary the letters LDPS, standing for "lineal descendants per stirpes." This designation substitutes a deceased beneficiary's descendants who survive the owner for a beneficiary who fails to so survive, the descendants to be identified and to share in accordance with the law of the beneficiary's domicile at the owner's death governing inheritance by descendants of an intestate. Other forms of identifying beneficiaries who are to take on one or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.

(c) The following are illustrations of registrations in beneficiary form that a registering entity may authorize:

(1) Sole owner-sole beneficiary: John S. Brown TOD (or POD) John S. Brown, Jr.

(2) Multiple owners-sole beneficiary: John S. Brown Mary B. Brown, JT TEN TOD John S. Brown, Jr.

(3) Multiple owners-primary and secondary (substituted) beneficiaries: John S. Brown Mary B. Brown, JT TEN TOD John S. Brown, Jr. SUB BENE Peter Q. Brown , or John S. Brown Mary B. Brown JT TEN TOD John S. Brown Jr. LDPS.

5511. Nothing in this part alters the community character of community property or community rights in community property. This part is subject to Chapter 2 (commencing with Section 5010) of Part 1 of Division 5.

5512. This part applies to registrations of securities in beneficiary form made before, on, or after January 1, 1999, by decedents dying on or after January 1, 1999.

CHAPTER 243

An act to amend Sections 15674, 15681, 17051, 17103, 17350, 17352, 17356, and 17357 of the Corporations Code, relating to legal entities.

[Approved by Governor August 3, 1998. Filed with Secretary of State August 4, 1998.]

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

SECTION 1. Section 15674 of the Corporations Code is amended to read:

15674. (a) An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that (1) the partnership agreement so provides or (2) all general partners and a majority in interest of the limited partners consent.

(b) An assignee who has become a limited partner has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the partnership agreement and this chapter. An assignee who becomes a limited partner also is liable for the obligations of the assignor to make contributions as provided in Article 5 (commencing with Section 15651). However, the assignee is not obligated for liabilities unknown to the assignee at the time the assignee became a limited partner and which could not be ascertained from the partnership agreement.

(c) If an assignee of a limited partnership interest becomes a limited partner, the assignor is not released from the assignor's liability to the limited partnership under subdivision (c) of Section 15624, and Sections 15652 and 15666.

(d) If the general partner assigns all of the general partner's interest in the partnership to a third party, a majority in interest of the limited partners may remove that general partner.

SEC. 2. Section 15681 of the Corporations Code is amended to read:

15681. A limited partnership is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

(a) At the time or upon the happening of events specified in the partnership agreement.

(b) Except as otherwise provided in the partnership agreement, written consent of all general partners and a majority in interest of the limited partners.

(c) Unless otherwise provided in the partnership agreement, when a general partner ceases to be a general partner under Section 15642, unless (1) at the time there is at least one other general partner and the remaining general partner, or all the general partners if more than one remains, continue the business of the limited partnership, or (2) at the time there is no remaining general partner and a majority in interest of the limited partners or the greater interest provided in the partnership agreement agree in writing to continue the business of the limited partnership and, within six months after the last remaining general partner has ceased to be a general partner, admit one or more general partners.

(d) Entry of a decree of judicial dissolution under Section 15682.

SEC. 3. Section 17051 of the Corporations Code is amended to read:

17051. (a) The articles of organization shall set forth:

(1) The name of the limited liability company.

(2) The following statement:

The purpose of the limited liability company is to engage in any lawful act or activity for which a limited liability company may be organized under the Beverly-Killea Limited Liability Company Act.

(3) [RESERVED]

(4) The name and address of the initial agent for service of process on the limited liability company who meets the qualifications specified in paragraph (1) of subdivision (b) of Section 17061, unless a corporate agent is designated, in which case only the name of the agent shall be set forth.

(5) If the limited liability company is to be managed by one or more managers and not by all its members, the statement referred to in subdivision (b) of Section 17151. If the limited liability company is to be managed by only one manager, the articles of organization shall contain a statement to that effect.

(b) It is not necessary to set out in the articles of organization any of the powers of a limited liability company enumerated in this title.

(c) The articles of organization may contain any other provision not inconsistent with law, including, but not limited to:

(1) A provision limiting or restricting the business in which the limited liability company may engage or the powers that the limited liability company may exercise or both.

(2) Provisions governing the admission of members to the limited liability company.

(3) The time at which the limited liability company is to dissolve.

(4) Any events that will cause a dissolution of the limited liability company.

(5) A statement of whether there are limitations on the authority of managers or members to bind the limited liability company, and, if so, what the limitations are.

(6) The names of the managers of the limited liability company.

(d) No limitation upon the business, purposes, or powers of the limited liability company contained in or implied by the articles of organization or the operating agreement may be asserted by any person, except in one of the following types of proceedings:

(1) In a proceeding by a member or the state to enjoin the doing of unauthorized business by the limited liability company or its managers or officers, if third parties have not acquired rights thereby.

(2) In a proceeding to dissolve the limited liability company.

(3) In a derivative proceeding by the limited liability company or by a member suing on the company's behalf against the officers or managers of the limited liability company for violation of their authority. However, the limitation may not be asserted if the person asserting the limitation had actual knowledge of the limitation at the time of the act or event complained of.

(e) The Secretary of State may cancel the filing of articles of organization if a check or other remittance accepted in payment of the filing fee is not paid upon presentation. Upon receiving written notification that the item presented for payment has not been honored for payment, the Secretary of State shall give a first written notice of the applicability of this section to the agent for service of process or to the person submitting the instrument. Thereafter, if the amount has not been paid by cashier's check or equivalent, the Secretary of State shall give a second written notice of cancellation and the cancellation shall be effective at that time. The second notice shall be given 20 days or more after the first notice and 90 days or less after the original filing.

SEC. 4. Section 17103 of the Corporations Code is amended to read:

17103. (a) The articles of organization or a written operating agreement may provide to all or certain identified members or a specified class or group of members the right to vote separately or with all or any class or group of members on any matter. Voting by members may be on a per capita, number, financial interest, class, group, or any other basis. If no voting provision is contained in the articles of organization or written operating agreement:

(1) The members of a limited liability company shall vote in proportion to their interests in current profits of the limited liability company or, in the case of a member who has assigned his or her or its entire economic interest in the limited liability company to a person who has not been admitted as a member, in proportion to the interest in current profits that the assigning member would have, had the assignment not been made.

(2) Any amendment of the articles of organization or operating agreement shall require the unanimous vote of all members.

(3) In all other matters in which a vote is required, a vote of a majority in interest of the members shall be sufficient.

(b) Notwithstanding any provision to the contrary in the articles of organization or operating agreement, in no event shall the articles of organization be amended by a vote of less than a majority in interest of the members.

(c) Notwithstanding any provision to the contrary in the articles of organization or operating agreement, members shall have the right to vote on a dissolution of the limited liability company as provided in subdivision (b) of Section 17350 and on a merger of the limited liability company as provided in Section 17551.

SEC. 5. Section 17350 of the Corporations Code is amended to read:

17350. A limited liability company shall be dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

(a) At the time specified in the articles of organization, if any, or upon the happening of the events, if any, specified in the articles of organization or a written operating agreement.

(b) By the vote of a majority in interest of the members, or a greater percentage of the voting interests of members as may be specified in the articles of organization or a written operating agreement.

(c) Entry of a decree of judicial dissolution pursuant to Section 17351.

SEC. 6. Section 17352 of the Corporations Code is amended to read:

17352. In the event of a dissolution of a limited liability company:

(a) The managers who have not wrongfully dissolved the limited liability company or, if none, the members may wind up the limited liability company's affairs, unless the dissolution occurs pursuant to subdivision (c) of Section 17350, in which event the winding up shall be conducted in accordance with the decree of dissolution. The persons winding up the affairs of the limited liability company shall give written notice of the commencement of winding up by mail to all known creditors and claimants whose addresses appear on the records of the limited liability company.

(b) Upon the petition of any manager or of any member or members, or three or more creditors, a court of competent

jurisdiction may enter a decree ordering the winding up of the limited liability company if that appears necessary for the protection of any parties in interest. The decree shall designate the managers or members who are to wind up the limited liability company's affairs.

(c) Except as otherwise provided in the articles of organization or a written operating agreement, the managers or members winding up the affairs of the limited liability company pursuant to this section shall be entitled to reasonable compensation.

SEC. 7. Section 17356 of the Corporations Code is amended to read:

17356. (a) (1) The managers shall cause to be filed in the office of, and on a form prescribed by, the Secretary of State, a certificate of dissolution upon the dissolution of the limited liability company pursuant to Chapter 8 (commencing with Section 17350), unless the event causing the dissolution is that specified in subdivision (c) of Section 17350, in which case the managers or members conducting the winding up of the limited liability company's affairs pursuant to Section 17352 shall have the obligation to file the certificate of dissolution.

(2) The certificate of dissolution shall set forth all of the following:

(A) The name of the limited liability company and the Secretary of State's file number.

(B) Any other information the managers or members filing the certificate of dissolution determine to include.

(3) If a dissolution pursuant to subdivision (b) of Section 17350 is made by the vote of all of the members and a statement to that effect is added to the certificate of cancellation of articles of organization pursuant to subdivision (b), the separate filing of a certificate of dissolution pursuant to this subdivision is not required.

(b) (1) The managers or members who filed the certificate of dissolution shall cause to be filed in the office of, and on a form prescribed by, the Secretary of State, a certificate of cancellation of articles of organization upon the completion of the winding up of the affairs of the limited liability company pursuant to Chapter 8 (commencing with Section 17350), unless the event causing the dissolution is that specified in subdivision (c) of Section 17350, in which case the managers or members conducting the winding up of the limited liability company's affairs pursuant to Section 17352 shall have the obligation to file the certificate of cancellation of articles of organization.

(2) The certificate of cancellation of articles of organization shall set forth all of the following:

(A) The name of the limited liability company and the Secretary of State's file number.

(B) A statement that a person, limited liability company, or other business entity assumes the tax liability, if any, of the dissolving limited liability company as security for the issuance of a tax clearance certificate from the Franchise Tax Board and is responsible

for additional taxes or fees, if any, that are assessed under the Revenue and Taxation Code and become due after the date of the assumption of tax liability.

(C) Any other information the managers or members filing the certificate of cancellation of articles of organization determine to include.

(3) The Secretary of State shall notify the Franchise Tax Board of the filing and shall forward to the Franchise Tax Board any statement of assumption of tax liability accompanying the certificate of cancellation. The Franchise Tax Board shall determine from the available evidence whether or not all taxes and fees imposed on the limited liability company under the Revenue and Taxation Code have been paid or secured and shall notify the taxpayer of any outstanding tax or fee liability and the necessity of satisfying that liability.

(4) The Franchise Tax Board shall notify the Secretary of State when all taxes and fees imposed on the limited liability company under the Revenue and Taxation Code have been paid or secured, at which time the limited liability company shall cease to exist as of the date of filing its certificate of cancellation of articles of organization.

(5) When a limited liability company files a certificate of cancellation of articles of organization, the Secretary of State shall notify the limited liability company that the limited liability company will be dissolved as of the date of filing only if the Franchise Tax Board notifies the Secretary of State that all taxes and fees imposed on the limited liability company pursuant to Chapter 1.6 of Part II (commencing with Section 23091) of Division 2 of the Revenue and Taxation Code have been paid or secured.

SEC. 8. Section 17357 of the Corporations Code is amended to read:

17357. (a) Notwithstanding the filing of a certificate of dissolution, a majority in interest of the members may cause to be filed, in the office of, and on a form prescribed by, the Secretary of State, a certificate of continuation, in any of the following circumstances:

(1) The business of the limited liability company is to be continued pursuant to a unanimous vote of the remaining members.

(2) The dissolution of the limited liability company was by vote of the members pursuant to subdivision (b) of Section 17350 and each member who consented to the dissolution has agreed in writing to revoke his or her vote in favor of or consent to the dissolution.

(3) The limited liability company was not, in fact, dissolved.

(b) The certificate of continuation shall set forth all of the following:

(1) The name of the limited liability company and the Secretary of State's file number.

(2) The grounds provided by subdivision (a) that are the basis for filing the certificate of continuation.

(c) Upon the filing of a certificate of continuation, the certificate of dissolution shall be of no effect from the time of the filing of the certificate of dissolution.

CHAPTER 244

An act to amend Section 25143.2 of the Health and Safety Code, relating to hazardous waste.

[Approved by Governor August 3, 1998. Filed with Secretary of State August 4, 1998.]

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

SECTION 1. Section 25143.2 of the Health and Safety Code is amended to read:

25143.2. (a) Recyclable materials are subject to this chapter and the regulations adopted by the department to implement this chapter that apply to hazardous wastes, unless the department issues a variance pursuant to Section 25143, or except as provided otherwise in subdivision (b), (c), or (d) or in the regulations adopted by the department pursuant to Sections 25150 and 25151.

(b) Except as otherwise provided in subdivisions (e), (f), and (g), recyclable material that is managed in accordance with Section 25143.9 and is or will be recycled by any of the following methods shall be excluded from classification as a waste:

(1) Used or reused as an ingredient in an industrial process to make a product if the material is not being reclaimed.

(2) Used or reused as a safe and effective substitute for commercial products if the material is not being reclaimed.

(3) Returned to the original process from which the material was generated, without first being reclaimed, if the material is returned as a substitute for raw material feedstock, and the process uses raw materials as principal feedstocks.

(c) Except as otherwise provided in subdivision (e), any recyclable material may be recycled at a facility that is not authorized by the department pursuant to the applicable hazardous waste facilities permit requirements of Article 9 (commencing with Section 25200) if either of the following requirements is met:

(1) The material is a petroleum refinery waste containing oil that is converted into petroleum coke at the same facility at which the waste was generated unless the resulting coke product would be identified as a hazardous waste under this chapter.

(2) The material meets all of the following conditions:

(A) The material is recycled and used at the same facility at which the material was generated.

(B) The material is recycled within the applicable generator accumulation time limits specified in Section 25123.3 and the regulations adopted by the department pursuant to paragraph (1) of subdivision (b) of Section 25123.3.

(C) The material is managed in accordance with all applicable requirements for generators of hazardous wastes under this chapter and regulations adopted by the department.

(d) Except as otherwise provided in subdivisions (e), (f), (g), and (h), recyclable material that meets the definition of a non-RCRA hazardous waste in Section 25117.9, is managed in accordance with Section 25143.9, and meets or will meet any of the following requirements is excluded from classification as a waste:

(1) The material can be shown to be recycled and used at the site where the material was generated.

(2) The material qualifies as one or more of the following:

(A) The material is a product that has been processed from a hazardous waste, or has been handled, at a facility authorized by the department pursuant to the facility permit requirements of Article 9 (commencing with Section 25200) to process or handle the material, if the product meets both of the following conditions:

(i) The product does not contain constituents, other than those for which the material is being recycled, that render the material hazardous under regulations adopted pursuant to Sections 25140 and 25141.

(ii) The product is used, or distributed or sold for use, in a manner for which the product is commonly used.

(B) The material is a petroleum refinery waste containing oil that is converted into petroleum coke at the same facility at which the waste was generated, unless the resulting coke product would be identified as a hazardous waste under this chapter.

(C) The material is oily waste, used oil, or spent nonhalogenated solvent that is managed by the owner or operator of a refinery that is processing primarily crude oil and is not subject to permit requirements for the recycling of used oil, of a public utility, or of a corporate subsidiary, corporate parent, or subsidiary of the same corporate parent of the refinery or public utility, and meets all of the following requirements:

(i) The material is either burned in an industrial boiler, an industrial furnace, an incinerator, or a utility boiler that is in compliance with all applicable federal and state laws, or is recombined with normal process streams to produce a fuel or other refined petroleum product.

(ii) The material is managed at the site where it was generated; managed at another site owned or operated by the generator, a corporate subsidiary of the generator, a subsidiary of the same entity of which the generator is a subsidiary, or the corporate parent of the

generator; or, if the material is generated in the course of oil or gas exploration or production, managed by an unrelated refinery receiving the waste through a common pipeline.

(iii) The material does not contain constituents, other than those for which the material is being recycled, that render the material hazardous under regulations adopted pursuant to Sections 25140 and 25141, unless the material is an oil-bearing material or recovered oil that is managed in accordance with subdivisions (a) and (c) of Section 25144 or unless the material is used oil removed from equipment, vehicles, or engines used primarily at the refinery where it is to be used to produce fuels or other refined petroleum products and the used oil is managed in accordance with Section 279.22 of Title 40 of the Code of Federal Regulations prior to insertion into the refining process.

(D) The material is a fuel that is transferred to, and processed into, a fuel or other refined petroleum product at a petroleum refinery, as defined in paragraph (4) of subdivision (a) of Section 25144, and meets one of the following requirements:

(i) The fuel has been removed from a fuel tank and is contaminated with water or nonhazardous debris, of not more than 2 percent by weight, including, but not limited to, rust or sand.

(ii) The fuel has been unintentionally mixed with an unused petroleum product.

(3) The material is transported between locations operated by the same person who generated the material, if the material is recycled at the last location operated by that person and all of the conditions of clauses (i) to (vi), inclusive, of subparagraph (A) of paragraph (4) are met. If requested by the department or by any official authorized to enforce this section pursuant to subdivision (a) of Section 25180, a person handling material subject to this paragraph shall, within 15 days from the date of receipt of the request, supply documentation to show that the requirements of this paragraph have been satisfied.

(4) (A) The material is transferred between locations operated by the same person who generated the material, if the material is to be recycled at an authorized offsite hazardous waste facility and if all of the following conditions are met:

(i) The material is transferred by employees of that person in vehicles under the control of that person or by a registered hazardous waste hauler under contract to that person.

(ii) The material is not handled at any interim location.

(iii) The material is not held at any publicly accessible interim location for more than four hours unless required by other provisions of law.

(iv) The material is managed in compliance with this chapter and the regulations adopted pursuant to this chapter prior to the initial transportation of the material and after the receipt of the material at the last location operated by that person. Upon receipt of the material

at the last location operated by that person, the material shall be deemed to have been generated at that location.

(v) All of the following information is maintained in an operating log at the last location operated by that person and kept for at least three years after receipt of the material at that location:

(I) The name and address of each generator location contributing material to each shipment received.

(II) The quantity and type of material contributed by each generator to each shipment of material.

(III) The destination and intended disposition of all material shipped offsite or received.

(IV) The date of each shipment received or sent offsite.

(vi) If requested by the department, or by any law enforcement official, a person handling material subject to this paragraph shall, within 15 days from the date of receipt of the request, supply documentation to show that the requirements of this paragraph have been satisfied.

(B) For purposes of paragraph (3) and subparagraph (A) of this paragraph, "person" also includes corporate subsidiary, corporate parent, or subsidiary of the same corporate parent.

(C) Persons that are a corporate subsidiary, corporate parent, or subsidiary of the same corporate parent, and that manage recyclable materials under paragraph (3) or subparagraph (A) of this paragraph, are jointly and severally liable for any activities excluded from regulation pursuant to this section.

(5) The material is used or reused as an ingredient in an industrial process to make a product if the material is not being treated before introduction to that process except by one or more of the following procedures, and if any discharges to air from the following procedures do not contain constituents that are hazardous wastes pursuant to the regulations of the department and are in compliance with applicable air pollution control laws:

(A) Filtering.

(B) Screening.

(C) Sorting.

(D) Sieving.

(E) Grinding.

(F) Physical or gravity separation without the addition of external heat or any chemicals.

(G) pH adjustment.

(H) Viscosity adjustment.

(6) The material is used or reused as a safe and effective substitute for commercial products, if the material is not being treated except by one or more of the following procedures, and if any discharges to air from the following procedures do not contain constituents that are hazardous wastes pursuant to the regulations of the department and are in compliance with applicable air pollution control laws:

(A) Filtering.

(B) Screening.
(C) Sorting.
(D) Sieving.
(E) Grinding.
(F) Physical or gravity separation without the addition of external heat or any chemicals.
(G) pH adjustment.
(H) Viscosity adjustment.
(7) The material is a chlorofluorocarbon or hydrochlorofluorocarbon compound or a combination of chlorofluorocarbon or hydrochlorofluorocarbon compounds, is being reused or recycled, and is used in heat transfer equipment, including, but not limited to, mobile air-conditioning systems, mobile refrigeration, and commercial and industrial air-conditioning and refrigeration systems, used in fire extinguishing products, or contained within foam products.

(e) Notwithstanding subdivisions (b), (c), and (d), all of the following recyclable materials are hazardous wastes and subject to full regulation under this chapter, even if the recycling involves use, reuse, or return to the original process as described in subdivision (b), and even if the recycling involves activities or materials described in subdivisions (c) and (d):

(1) Materials that are a RCRA hazardous waste, as defined in Section 25120.2, used in a manner constituting disposal, or used to produce products that are applied to the land, including, but not limited to, materials used to produce a fertilizer, soil amendment, agricultural mineral, or an auxiliary soil and plant substance.

(2) Materials that are a non-RCRA hazardous waste, as defined in Section 25117.9, and used in a manner constituting disposal or used to produce products that are applied to the land as a fertilizer, soil amendment, agricultural mineral, or an auxiliary soil and plant substance. The department may adopt regulations to exclude materials from regulation pursuant to this paragraph.

(3) Materials burned for energy recovery, used to produce a fuel, or contained in fuels, except materials exempted under paragraph (1) of subdivision (c) or excluded under subparagraph (B), (C), or (D) of paragraph (2) of subdivision (d).

(4) Materials accumulated speculatively.

(5) Materials determined to be inherently wastelike pursuant to regulations adopted by the department.

(6) Used or spent etchants, stripping solutions, and plating solutions that are transported to an offsite facility operated by a person other than the generator and either of the following applies:

(A) The etchants or solutions are no longer fit for their originally purchased or manufactured purpose.

(B) If the etchants or solutions are reused, the generator and the user cannot document that they are used for their originally purchased or manufactured purpose without prior treatment.

(7) Used oil, as defined in subdivision (a) of Section 25250.1, unless one of the following applies:

(A) The used oil is excluded under subparagraph (B) or (C) of paragraph (2) of subdivision (d), paragraph (4) of subdivision (d), subdivision (e) of Section 25250.1, Section 25250.2, or Section 25250.3, and is managed in accordance with the applicable requirements of Part 279 (commencing with Section 279.1) of Title 40 of the Code of Federal Regulations.

(B) The used oil is used or reused on the site where it was generated or is excluded under paragraph (3) of subdivision (d), is managed in accordance with the applicable requirements of Part 279 (commencing with Section 279.1) of Title 40 of the Code of Federal Regulations, and is not any of the following:

(i) Used in a manner constituting disposal or used to produce a product that is applied to land.

(ii) Burned for energy recovery or used to produce a fuel unless the used oil is excluded under subparagraph (B) or (C) of paragraph (2) of subdivision (d).

(iii) Accumulated speculatively.

(iv) Determined to be inherently wastelike pursuant to regulations adopted by the department.

(f) (1) Any person who manages a recyclable material under a claim that the material qualifies for exclusion or exemption pursuant to this section shall provide, upon request, to the department, the Environmental Protection Agency, or any local agency or official authorized to bring an action as provided in Section 25180, all of the following information:

(A) The name, street and mailing address, and telephone number of the owner or operator of any facility that manages the material.

(B) Any other information related to the management by that person of the material requested by the department, the Environmental Protection Agency, or the authorized local agency or official.

(2) Any person claiming an exclusion or an exemption pursuant to this section shall maintain adequate records to demonstrate to the satisfaction of the requesting agency or official that there is a known market or disposition for the material, and that the requirements of any exemption or exclusion pursuant to this section are met.

(3) For purposes of determining that the conditions for exclusion from classification as a waste pursuant to this section are met, any person, facility, site, or vehicle engaged in the management of a material under a claim that the material is excluded from classification as a waste pursuant to this section shall be subject to Section 25185.

(g) For purposes of Chapter 6.8 (commencing with Section 25300), recyclable materials excluded from classification as a waste pursuant to this section are not excluded from the definition of hazardous substances in subdivision (g) of Section 25316.

(h) Used oil that fails to qualify for exclusion pursuant to subdivision (d) solely because the used oil is a RCRA hazardous waste may be managed pursuant to subdivision (d) if the used oil is also managed in accordance with the applicable requirements of Part 279 (commencing with Section 279.1) of Title 40 of the Code of Federal Regulations.

CHAPTER 245

An act to amend Section 140 of the Penal Code, relating to violence against crime victims or witnesses.

[Approved by Governor August 3, 1998. Filed with Secretary of State August 4, 1998.]

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

SECTION 1. Section 140 of the Penal Code is amended to read:

140. (a) Except as provided in Section 139, every person who willfully uses force or threatens to use force or violence upon the person of a witness to, or a victim of, a crime or any other person, or to take, damage, or destroy any property of any witness, victim, or any other person, because the witness, victim, or other person has provided any assistance or information to a law enforcement officer, or to a public prosecutor in a criminal proceeding or juvenile court proceeding, shall be punished by imprisonment in the county jail not exceeding one year, or by imprisonment in the state prison for two, three, or four years.

(b) A person who is punished under another provision of law for an act described in subdivision (a) shall not receive an additional term of imprisonment under 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 that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 246

An act to amend Section 4466 of the Vehicle Code, relating to vehicles.

[Approved by Governor August 3, 1998. Filed with Secretary of State August 4, 1998.]

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

SECTION 1. Section 4466 of the Vehicle Code is amended to read:

4466. (a) The department shall not issue a copy, duplication, or substitution of a certificate of ownership or license plate if, after a search of the records of the department, the registered owner's address, as submitted with the application for that document, is different from that which appears in the records of the department, unless the registered owner applies for that document in person and presents all of the following:

(1) Proof of ownership of the vehicle that is acceptable to the department.

(2) A driver's license or identification card containing a picture of the licensee or cardholder issued to the registered owner by the department pursuant to Chapter 1 (commencing with Section 12500) of Division 6. The department shall conduct a search of its records to verify the authenticity of any document submitted under this paragraph.

(3) If the application is for the purpose of replacing a certificate or license plate that was stolen, a copy of a police report identifying the document as stolen.

(4) If the application is for the purpose of replacing a certificate or license plate that was mutilated or destroyed, the remnants of the mutilated or destroyed document.

(4) If the department has a record of a prior issuance of a copy, duplication, or substitution of a certificate or license plate for the vehicle, a copy of a report from the Department of the California Highway Patrol verifying the vehicle identification number of the vehicle.

(b) Subdivision (a) does not apply if the registered owner's name and driver's license or identification card number submitted on the application matches the name and driver's license or identification card number contained in the department's registration record for that vehicle, or if an application is submitted by or through a dealer, a dismantler, an insurer, an agent of the insurer, or a salvage pool.

CHAPTER 247

An act to amend Sections 206, 1055, 3031, and 3050 of, and to amend, repeal, and add Section 7149 of, the Fish and Game Code, relating to fish and game.

[Approved by Governor August 3, 1998. Filed with Secretary of State August 4, 1998.]

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

SECTION 1. Section 206 of the Fish and Game Code is amended to read:

206. (a) In addition to, or in conjunction with, other regular or special meetings the commission shall, in odd-numbered years, hold meetings in the first 10 days of August, October, November, and December for the purpose of considering and adopting revisions to regulations relating to fish, amphibia, and reptiles. The commission shall alternate the locations of the August and December meetings between Los Angeles or Long Beach and Sacramento, and the October and November meetings between San Diego and Redding or Red Bluff.

(b) At the August meeting, the commission shall receive recommendations for regulations from its own members and staff, the department, other public agencies, and the public.

(c) At the October and November meetings, the commission shall devote time for open public discussion of proposed regulations presented at the August meeting. The department shall participate in this discussion by reviewing and presenting its findings regarding each regulation proposed by the public and by responding to objections raised pertaining to its proposed regulations. After considering the public discussion, the commission shall announce, prior to adjournment of the November meeting, the regulations it intends to add, amend, or repeal relating to fish, amphibia, and reptiles.

(d) At the December meeting, the commission may choose to hear additional public discussion regarding the regulations it intends to adopt. At, or within 20 days after, the meeting, the commission shall add, amend, or repeal regulations relating to any recommendation received at the August meeting regarding fish, amphibia, and reptiles it deems necessary to preserve, properly utilize, and maintain each species or subspecies.

(e) Within 45 days after adoption, the department shall publish and distribute regulations adopted pursuant to this section.

SEC. 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 may 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 may 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 may be made by the license agent for issuing punch cards, licenses, license stamps, or license tags authorized under this section.

(e) The department may designate a nonprofit organization, organized pursuant to the laws of this state, or the California chapter of a nonprofit organization, organized pursuant to the laws of another state, as a license agent for the sale of lifetime licenses issued pursuant to Sections 714, 3031.2, and 7149.2. These licenses may be sold by auction or by other methods and are not subject to the fee limitations prescribed in this code. An agent authorized to issue lifetime sport fishing licenses, lifetime hunting licenses, and lifetime sportsman's licenses under this subdivision is exempt from subdivisions (b) and (d). The license agent shall remit to the department all revenue derived from the sale of the lifetime licenses.

(f) 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 sport fishing licenses. This

subdivision does not apply to nonresident licenses and nonresident license tags.

(g) 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.

(h) The department, alternatively, may provide for the issuance of punch cards, licenses, license stamps, and license tags to authorized license agents and shall collect 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.

(i) 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 may 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 may be allowed after six months following the last day of the license year.

SEC. 3. Section 3031 of the Fish and Game Code is amended to read:

3031. (a) A hunting license, granting the privilege to take birds and mammals, shall be issued to any of the following:

(1) A resident of this state, 16 years of age or older, upon the payment of a base fee of seventeen dollars ($17), as adjusted under Section 713.

(2) A person under the age of 16 years, upon the payment of a base fee of four dollars ($4), as adjusted under Section 713.

(3) A person not a resident of this state, 16 years of age or older, upon the payment of a base fee of fifty-nine dollars ($59), as adjusted under Section 713.

(4) A person not a resident of this state, 16 years of age or older, valid only for two consecutive days upon payment of a base fee of twenty-five dollars ($25), as adjusted under Section 713. A license issued pursuant to this paragraph is valid only for taking resident and migratory game birds, resident small game mammals, fur-bearing

mammals, and nongame mammals, as defined in this code or in regulations adopted by the commission.

(5) A person not a resident of this state, valid for one day and only for the taking of domesticated game birds and pheasants while on the premises of a licensed game bird club, or for the taking of domesticated migratory game birds in areas licensed for shooting those birds, upon the payment of a base fee of eight dollars ($8), as adjusted under Section 713.

(b) The adjustment of the base fees under Section 713, which are specified in paragraphs (1) to (5), inclusive, of subdivision (a), are applicable to the hunting license years beginning on and after July 1, 1988.

SEC. 4. Section 3050 of the Fish and Game Code is amended to read:

3050. (a) No hunting license may be issued to any person unless he or she presents to the person authorized to issue that license any of the following:

(1) Evidence that he or she has held a hunting license issued by this state in a prior year.

(2) Evidence that he or she holds a current hunting license issued by another state or province.

(3) A certificate of completion of a course in hunter safety, principles of conservation, and sportsmanship, as provided in this article, with a hunter safety instruction validation stamp affixed thereto.

(4) A certificate of successful completion of a hunter safety course in another state or province.

(5) Evidence of completion of a course in hunter safety, principles of conservation, and sportsmanship, which the commission may, by regulation, require.

(b) The evidence required in subdivision (a) shall be forwarded to the department with the license agent's report of hunting license sales as required pursuant to Section 1055.5.

(c) Subdivision (a) does not apply to any person purchasing a hunting license under paragraph (5) of subdivision (a) of Section 3031. However, that license may not qualify as evidence required in subdivision (a) of this section.

SEC. 5. Section 7149 of the Fish and Game Code is amended to read:

7149. (a) A sportfishing license granting the privilege to take any fish, reptile, or amphibia anywhere in this state for purposes other than profit shall be issued to any of the following:

(1) A resident of this state, over the age of 16 years, upon payment during the 1987 calendar year, or, if issued after the beginning of the year, for the remainder thereof, upon payment of a fee of eighteen dollars ($18), or upon the payment during a calendar year beginning on or after January 1, 1988, of the base fee of sixteen dollars seventy-five cents ($16.75), as adjusted under Section 713.

(2) A nonresident, over the age of 16 years, for the period of a calendar year, or, if issued after the beginning of the year, for the remainder thereof, upon payment of a base fee of forty-five dollars ($45), as adjusted under Section 713.

(3) A nonresident, over the age of 16 years for the period of 10 consecutive days beginning on the date specified on the license upon payment of the fee set forth in paragraph (1), as adjusted under Section 713.

(4) A resident or nonresident, over the age of 16 years, for two consecutive designated calendar days, upon payment of the base fee of seven dollars ($7) as adjusted under Section 713. Notwithstanding Section 1053, more than one two-day license issued for different two-day periods may be issued to, or possessed by, a person at one time.

(b) A sport ocean fishing license granting the licensee to take any fish from ocean waters of this state for purposes other than profit shall be issued to a resident of this state, over the age of 16 years, for the period of a calendar year, or if issued after the beginning of the year, for the remainder thereof, upon payment of a base fee of ten dollars ($10), as adjusted under Section 713.

(c) A sport ocean fin fishing license granting the privilege to take only fin fish from the ocean waters of this state for purposes other than profit shall be issued to a person over the age of 16 years for one designated day, upon the payment for a designated day in the license year beginning on January 1 of the base fee of four dollars ($4), as adjusted under Section 713.

(d) For the purposes of this section, the adjustment under Section 713 shall be calculated and added to the base fees to establish the fees paid for licenses issued in the license years beginning on and after January 1, 1988, in accordance with Section 713.

(e) California sportfishing license stamps shall be sold by license agents in the same manner as sportfishing licenses, and no compensation may be paid to the license agent for sale of the stamps except as provided in Section 1055.

(f) This section shall remain in effect until January 1, 2002, and as of that date is repealed unless a later enacted statute, which is enacted on or before January 1, 2002, deletes or extends that date.

SEC. 6. Section 7149 is added to the Fish and Game Code, to read:

7149. (a) A sportfishing license granting the privilege to take any fish, reptile, or amphibia anywhere in this state for purposes other than profit shall be issued to any of the following:

(1) A resident of this state, over the age of 16 years, upon payment during the 1987 calendar year, or, if issued after the beginning of the year, for the remainder thereof, upon payment of a fee of eighteen dollars ($18), or upon the payment during a calendar year beginning on or after January 1, 1988, of the base fee of sixteen dollars seventy-five cents ($16.75), as adjusted under Section 713.

(2) A nonresident, over the age of 16 years, for the period of a calendar year, or, if issued after the beginning of the year, for the remainder thereof, upon payment of a base fee of forty-five dollars ($45), as adjusted under Section 713.

(3) A nonresident, over the age of 16 years for the period of 10 consecutive days beginning on the date specified on the license upon payment of the fee set forth in paragraph (1), as adjusted under Section 713.

(4) A resident or nonresident, over the age of 16 years, for one designated day, upon payment of the base fee of seven dollars ($7) as adjusted under Section 713. Notwithstanding Section 1053, more than one single day license issued for different days may be issued to, or possessed by, a person at one time.

(b) A sport ocean fishing license granting the licensee to take any fish from ocean waters of this state for purposes other than profit shall be issued to a resident of this state, over the age of 16 years, for the period of a calendar year, or if issued after the beginning of the year, for the remainder thereof, upon payment of a base fee of ten dollars ($10), as adjusted under Section 713.

(c) A sport ocean fin fishing license granting the privilege to take only fin fish from the ocean waters of this state for purposes other than profit shall be issued to a person over the age of 16 years for one designated day, upon the payment for a designated day in the license year beginning on January 1 of the base fee of four dollars ($4), as adjusted under Section 713.

(d) For the purposes of this section, the adjustment under Section 713 shall be calculated and added to the base fees to establish the fees paid for licenses issued in the license years beginning on and after January 1, 1988, in accordance with Section 713.

(e) California sportfishing license stamps shall be sold by license agents in the same manner as sportfishing licenses, and no compensation may be paid to the license agent for sale of the stamps except as provided in Section 1055.

(f) This section shall become operative on January 1, 2002.

CHAPTER 248

An act to amend Sections 23386 and 25503.5 of the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor August 3, 1998. Filed with Secretary of State August 4, 1998.]

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

SECTION 1. Section 23386 of the Business and Professions Code is amended to read:

23386. (a) Any manufacturer's, wine grower's, manufacturer's agent's, rectifier's, importer's, or wholesaler's license also authorizes the giving away of samples of the alcoholic beverages that are authorized to be sold by the license under the rules that may be prescribed by the department. A retail license does not authorize the furnishing or giving away of any free samples of alcoholic beverages.

(b) Notwithstanding subdivision (a), an on-sale retail licensee authorized to sell wine may instruct consumers at the on-sale retail licensed premises regarding wines sold by the retail licensee. Notwithstanding subdivision (a), an on-sale retail licensee authorized to sell distilled spirits may instruct consumers at the on-sale retail licensed premises regarding distilled spirits. The instruction may include, without limitation, the history, nature, values, and characteristics of the product, and the methods of presenting and serving the product. The instruction of consumers may include the furnishing of not more than three tastings to any individual in one day. A single tasting of distilled spirits may not exceed one-fourth of one ounce and a single tasting of wine may not exceed one ounce. Nothing in this subdivision shall limit the giving away of samples pursuant to subdivision (a).

SEC. 2. Section 25503.5 of the Business and Professions Code is amended to read:

25503.5. (a) A winegrower, beer manufacturer, or a beer and wine wholesaler may, without charge, instruct licensees and their employees, or conduct courses of instruction for licensees and their employees, on the subject of wine or beer, including but not limited to, the history, nature, values, and characteristics of wine or beer, the use of wine lists, and the methods of presenting and serving wine or beer. The winegrower, beer manufacturer, or beer and wine wholesaler may furnish wine or beer and the equipment, materials and utensils that may be required for use in connection with the instruction or courses of instruction.

(b) A distilled spirits manufacturer, distilled spirits manufacturer's agent, distilled spirits general rectifier, or distilled spirits general importer may, without charge, instruct licensees and their employees, or conduct courses of instruction for licensees and their employees, on the subject of distilled spirits, including, but not limited to, the history, nature, values, and characteristics of distilled spirits, and the methods of presenting and serving distilled spirits. The distilled spirits manufacturer or distilled spirits manufacturer's agent may furnish distilled spirits and the equipment, materials, and utensils that may be required for use in connection with the instruction or courses of instruction.

(c) A winegrower or distilled spirits manufacturer, or its authorized agent may instruct consumers at an on-sale retail licensed premises authorized to sell its product with the permission of the retail on-sale licensee. The instruction may include, without limitation, the history, nature, values, and characteristics of the

product and the methods of presenting and serving the product. The instruction of consumers may include the furnishing of not more than three tastings to any individual in one day. A single tasting of distilled spirits may not exceed one-fourth of one ounce and a single tasting of wine may not exceed one ounce. The winegrower or distilled spirits manufacturer, or its authorized agent shall remove any unfinished alcoholic beverages that he or she provided following the instruction. Nothing in this subdivision shall limit the giving away of samples pursuant to subdivision (a) of Section 23386.

(d) The instruction or courses of instruction, authorized in subdivision (a) or (b), may be given at the premises of the winegrower, beer manufacturer, beer and wine wholesaler, distilled spirits manufacturer, distilled spirits manufacturer's agent, distilled spirits general rectifier, distilled spirits general importer or of a licensee, including an on-sale retail licensee, or elsewhere.

CHAPTER 249

An act to amend Section 4252 of the Family Code, relating to child support proceedings.

[Approved by Governor August 3, 1998. Filed with Secretary of State August 4, 1998.]

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

SECTION 1. Section 4252 of the Family Code is amended to read:

4252. (a) One or more child support commissioners shall be appointed by the superior court to perform the duties specified in Section 4251. The child support commissioners first priority always shall be to hear Title IV-D child support cases. The child support commissioners shall specialize in hearing child support cases, and their primary responsibility shall be to hear Title IV-D child support cases. Child support commissioner positions shall not be subject to the limitation on other commissioner positions imposed upon the counties by Article 13 (commencing with Section 70140) of Chapter 5 of Title 8 of the Government Code. The number of child support commissioner positions allotted to each superior court shall be determined by the Judicial Council in accordance with caseload standards developed pursuant to paragraph (3) of subdivision (b), subject to appropriations in the annual Budget Act.

(b) The Judicial Council shall do all of the following:

(1) Establish minimum qualifications for child support commissioners.

(2) Establish minimum educational and training requirements for child support commissioners and other court personnel that are assigned to Title IV-D child support cases. Training programs shall

include both federal and state laws concerning child support, and related issues.

(3) Establish caseload, case processing, and staffing standards for child support commissioners on or before April 1, 1997, which shall set forth the maximum number of cases that each child support commissioner can process. These standards shall be reviewed and, if appropriate, revised by the Judicial Council every two years.

(4) Adopt uniform rules of court and forms for use in Title IV-D child support cases.

(5) Offer technical assistance to counties regarding issues relating to implementation and operation of the child support commissioner system, including assistance related to funding, staffing, and the sharing of resources between counties.

(6) Establish procedures for the distribution of funding to the courts for child support commissioners, family law facilitators pursuant to Division 14 (commencing with Section 10000) and related allowable costs.

(7) Adopt rules that define the exceptional circumstances in which judges may hear Title IV-D child support matters as provided in subdivision (a) of Section 4251.

(8) Convene a workgroup, including representatives of the State Department of Social Services, county district attorneys, child support commissioners, child support advocates, family law facilitators, attorneys engaging in the private practice of family law, custodial and noncustodial parents' organizations, and staff of the Assembly and Senate Judiciary Committees, to advise the Judicial Council in establishing criteria to evaluate the success and identify any failures of the child support commissioner system. The workgroup shall also provide advice on how to establish successful outcomes for the child support commissioner system created pursuant to this article. The Judicial Council shall conduct an evaluation and report the results of the evaluation and its recommendations to the Legislature no later than February 1, 2000. At a minimum, the evaluation shall examine the ability of the child support commissioner system to achieve the goals set forth in Section 4250. The report shall include a fiscal impact statement estimating the costs of implementing the recommendations.

(9) Undertake other actions as appropriate to ensure the successful implementation and operation of child support commissioners in the counties.

CHAPTER 250

An act to add Section 26915 to the Government Code, relating to counties.

[Approved by Governor August 3, 1998. Filed with Secretary of State August 4, 1998.]

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

SECTION 1. Section 26915 is added to the Government Code, to read:

26915. (a) Any requirement that an audit be performed by the county auditor may, at the election of the board of supervisors, also be performed by a county employee or officer who meets both of the following qualifications:

(1) The person possesses a valid certificate issued by the California State Board of Accountancy and a permit authorizing the person to practice as a certified public accountant or as a public accountant.

(2) The employee or officer is independent in accordance with Rule 101 of the American Institute of Certified Public Accountants' Code of Professional Conduct.

(b) The election made by the board of supervisors pursuant to subdivision (a) may be in effect for no more than two years after the date that the vote is taken by the board, but the election may be renewed upon expiration.

(c) This section shall only be applicable in the County of Orange.

(d) Nothing in this section is intended to preclude a county auditor from performing his or her statutorily prescribed duties.

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 due to unique requirements applicable to local government in the County of Orange.

CHAPTER 251

An act to amend Section 25531.2 of the Health and Safety Code, relating to regulated substances.

[Approved by Governor August 3, 1998. Filed with Secretary of State August 4, 1998.]

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

SECTION 1. Section 25531.2 of the Health and Safety Code is amended to read:

25531.2. (a) The Legislature finds and declares that as the state implements the federal accidental release prevention program pursuant to this article, the Office of Emergency Services will play a vital and increased role in preventing accidental releases of extremely hazardous substances. The Legislature further finds and

declares that as an element of the unified program established pursuant to Chapter 6.11 (commencing with Section 25404), a single fee system surcharge mechanism is established by Section 25404.5 to cover the costs incurred by the office pursuant to this article. It is the intent of the Legislature that this existing authority, together with any federal assistance that may become available to implement the accidental release program, be used to fully fund the activities of the office necessary to implement this article.

(b) The office shall use any federal assistance received to implement Chapter 6.11 (commencing with Section 25404) to offset any fees or charges levied to cover the costs incurred by the office pursuant to this article.

CHAPTER 252

An act to add Sections 13332.19 and 14661 to the Government Code, relating to state property.

[Approved by Governor August 3, 1998. Filed with Secretary of State August 4, 1998.]

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

SECTION 1. (a) The Legislature finds and declares that it is in the best interests of the state to construct state office and other facilities in a cost-efficient manner that represents the best overall value to the taxpayers. In order for this goal to be accomplished, state agencies need to be able to use the best possible project delivery procurement systems.

(b) The Legislature finds and declares that the design-build process can be an attractive option to the Department of General Services in comparison to the existing three-step (design-bid-build) process. The design-build process can improve the project delivery process by accelerating delivery schedules and saving costs by promoting improved coordination between contractor and architect, shifting management risk from the state to the design-build team, and minimizing change orders through early collaboration between design and construction disciplines.

(c) The Legislature has recognized the merits of the design-build procurement process in the past by authorizing its use for projects undertaken by the University of California, joint-venture public school projects, specified local government projects, and several state office buildings under construction in Oakland, San Francisco, and Los Angeles. The design-build procurement process has also been approved for use by public entities in other states, as well as the federal government.

(d) Therefore, it is the intent of the Legislature in enacting this act to define the design-build construction procurement process for state facilities to establish the parameters for its use when the Legislature authorizes the Director of General Services to use this process for a specific project that involves the construction of state office and other facilities.

(e) In addition, it is the intent of the Legislature that the full scope of design, construction, and equipment awarded to a design-build entity shall be authorized in a single funding phase. The funding phase may be authorized concurrently with, or separately from, the phase that authorizes the creation of the performance criteria or performance criteria and concept drawings.

SEC. 2. Section 13332.19 is added to the Government Code, to read:

13332.19. (a) Except as otherwise specified in paragraphs (1) and (2), no funds appropriated for a design-build capital outlay project may be expended until the Department of Finance and the State Public Works Board have approved performance criteria or performance criteria and concept drawings for the project to be financed from the appropriation for capital outlay.

This subdivision shall not apply to either of the following:

(1) Amounts for acquisition of land.

(2) Amounts appropriated specifically for preliminary surveys, studies, and planning.

(b) Any appropriated amounts for the design-build phase of a design-build project, where funds have been expended on the design-build phase by any state agency prior to the approval of the performance criteria or the performance criteria and concept drawings by the State Public Works Board, and all amounts not approved by the State Public Works Board under this section shall be reverted to the fund from which the appropriation was made. If the Director of Finance or his or her authorized representative requests review of the design-build bid package, no design-build project for which an appropriation is made shall be put out to bid until the bid package has been approved by the Department of Finance. No substantial change shall be made from the performance criteria or performance criteria and concept drawings as approved by the State Public Works Board and the Department of Finance without written approval by the Department of Finance. Any proposed bid alternates shall be approved by the Department of Finance.

(c) The State Public Works Board shall defer all augmentations in excess of 20 percent of the amount appropriated for each design-build capital outlay project until the Legislature makes additional funds available for the specific project.

(d) Any augmentation of the design-build phase of a design-build project shall be consistent with the intent of subdivision (e) of Section 13332.11.

(e) Prior to State Public Works Board action on any design-build capital outlay appropriation, the Department of Finance shall certify, in writing, to the Chairperson of the Joint Legislative Budget Committee, the chairpersons of the respective fiscal committees, and the legislative members of the board that the requested action is in accordance with the legislatively approved scope and cost. If, pursuant to other provisions of this section, the Department of Finance approves changes to the approved scope or cost, or both, the department shall report the changes and associated cost implications. The reports also shall include all proposed or potential augmentations in excess of 10 percent of the amount appropriated for the costs of the design-build phase of the capital outlay project.

(f) The State Public Works Board shall defer action with respect to approval of performance criteria or performance criteria and concept drawings, when it is determined that the estimated cost of the total design-build project approved by the Legislature is in excess of 20 percent of the amount appropriated.

(g) For the purposes of this section, the following definitions shall apply:

(1) "Concept drawings" means any schematic drawings or architectural renderings that are prepared, in addition to performance criteria, in such detail as the Director of General Services determines necessary to sufficiently describe the state's needs.

(2) "Design-build bid package" means the performance criteria, any concept drawings deemed necessary by the Department of General Services, the form of contract, and all other documents and information that serve as the basis on which bids or proposals will be solicited to the design-build entities.

(3) "Design-build phase" means the period following the award of a contract to a design-build team in which the design-build entity completes the design and construction activities necessary to fully complete the project in compliance with the terms of the contract.

(4) "Performance criteria" means the information that fully describes the scope of the proposed project and includes, but is not limited to, the size, type, and design character of the buildings and site, the performance specifications that describe the required quality of materials, equipment, and workmanship, and any other information deemed necessary to sufficiently describe the state's needs.

SEC. 3. Section 14661 is added to the Government Code, to read:

14661. (a) Notwithstanding any provision of the Public Contract Code or any other provision of law, when the Legislature authorizes the use of the design-build construction procurement process for a specific project, the Director of General Services may contract and procure state office facilities and other buildings, structures, and related facilities pursuant to this section.

(b) For purposes of this section, "design-build" means a procurement process in which both the design and construction of a project are procured from a single entity.

(c) For purposes of this section, "design-build entity" means a partnership, corporation, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services as needed.

(d) Prior to contracting for the procurement of state office facilities and other state buildings and structures, the director shall:

(1) Prepare a program setting forth the scope of the project that may include, but is not limited to, the size, type, and desired design character of the buildings and site, performance specifications covering the quality of materials, equipment, and workmanship, or any other information deemed necessary to describe adequately the state's needs. The performance specifications shall be prepared by a design professional duly licensed and registered in the State of California.

(2) (A) Establish a competitive prequalification and selection process for design-build entities, including any subcontractors listed at the time of bid, that clearly specifies the prequalification criteria, as well as recommend the manner in which the winning entity will be selected.

(B) Prequalification shall be limited to consideration of all of the following criteria:

(i) Possession of all required licenses, registration, and credentials in good standing that are required to design and construct the project.

(ii) Submission of evidence that establishes that the design-build entity members have completed, or demonstrated the capability to complete, projects of similar size, scope, or complexity, and that proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project.

(iii) Submission of a proposed project management plan that establishes that the design-build entity has the experience, competence, and capacity needed to effectively complete the project.

(iv) Submission of evidence that establishes that the design-build entity has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance, as well as a financial statement that assures the department that the design-build entity has the capacity to complete the project.

(v) Provision of a declaration certifying that applying members of the design-build entity have not had a surety company finish work on any project within the last five years.

(vi) Provision of information and a declaration providing detail concerning all of the following:

(I) Any construction or design claim or litigation totaling more than five hundred thousand dollars ($500,000) or 5 percent of the annual value of work performed, whichever is less, settled against any member of the design-build entity over the last five years.

(II) Serious violations of the Occupational Safety and Health Act, as provided in Part 1 (commencing with Section 6300) of Division 5 of the Labor Code, settled against any member of the design-build entity.

(III) Violations of federal or state law, including, but not limited to, those laws governing the payment of wages, benefits, or personal income tax withholding, or of Federal Insurance Contributions Act (FICA) withholding requirements, state disability insurance withholding, or unemployment insurance payment requirements, settled against any member of the design-build entity over the last five years. For the purposes of this subclause, only violations by a design-build member as an employer shall be deemed applicable, unless it is shown that the design-build entity member, in his or her capacity as an employer, had knowledge of his or her subcontractor's violations or failed to comply with the conditions set forth in subdivision (b) of Section 1775 of the Labor Code.

(IV) Information required by Section 10162 of the Public Contract Code.

(V) Violations of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), excluding alleged violations or complaints.

(VI) Any conviction of any member of the design-build entity of submitting a false or fraudulent claim to a public agency over the last five years.

(vii) Provision of a declaration that the design-build entity will comply with all other provisions of law applicable to the project, including, but not limited to, the requirements of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(C) The director, when requested by the design-build entity, shall hold in confidence any information required by clauses (i) to (vi), inclusive.

(D) Any declaration required under subparagraph (B) shall state that reasonable diligence has been used in its preparation and that it is true and complete to the best of the signer's knowledge. A person who certifies as true any material matter that he or she knows to be false is guilty of a misdemeanor and shall be punished by not more than one year in a county jail, by a fine of not more than five thousand dollars ($5,000), or by both the fine and imprisonment.

(3) (A) Recommend, as he or she deems in the best interests of the state, to the Legislature one of the following methods as the process to be used for the selection of the winning entity:

(i) A design-build competition based upon performance, price, and other criteria set forth by the department in the solicitation for

proposals. The department shall establish technical criteria and methodology, including price, to evaluate proposals and shall describe the criteria and methodology in the request for design-build proposals. Award shall be made to the design-build entity whose proposal is judged as providing the best value in meeting the interest of the department and meeting the objectives of the project. A project with an approved budget of ten million dollars ($10,000,000) or more may be awarded pursuant to this clause.

(ii) A design-build competition based upon performance and other criteria set forth by the department in the solicitation for proposals. Criteria used in this evaluation of proposals may include, but need not be limited to, items such as proposed design approach, life-cycle costs, project features, and functions. However, any criteria and methods used to evaluate proposals shall be limited to those contained in the request for design-build proposals. Award shall be made to the design-build entity whose proposal is judged as providing the best value, for the lowest price, meeting the interests of the department and meeting the objectives of the project. A project with an approved budget of ten million dollars ($10,000,000) or more may be awarded pursuant to this clause.

(iii) A design-build competition based upon program requirements and a detailed scope of work, including any concept drawings and specifications set forth by the department in the solicitation for proposals. Award shall be made on the basis of the lowest responsible bid. A project with an approved budget of two hundred fifty thousand dollars ($250,000) or more may be awarded pursuant to this clause.

(B) Notwithstanding any other provision of law, no project valued under two hundred fifty thousand dollars ($250,000) shall be awarded pursuant to subparagraph (A).

(C) The legislation providing final authorization to construct a specific project using the design-build construction procurement process shall specify one of the methods described in clauses (i) to (iii), inclusive, of subparagraph (A) for the selection of the winning entity.

(e) The Legislature recognizes that the design-build entity is charged with performing both design and construction. Because a design-build contract may be awarded prior to the completion of the design, it is often impracticable for the design-build entity to list all subcontractors at the time of the award. As a result, the subcontractor listing requirements contained in Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code can create a conflict with the implementation of the design-build process by requiring all subcontractors to be listed at a time when a sufficient set of plans may not be available. It is the intent of the Legislature to establish a clear process for the selection and award of subcontracts entered into pursuant to this section in a manner that retains protection for subcontractors while enabling design-build projects to

be administered in an efficient fashion. Therefore, all of the following requirements shall apply to subcontractors, licensed pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, that are employed on design-build projects undertaken pursuant to this section:

(1) The department, in each design-build request for proposal, may identify types of subcontractors, by subcontractor license classification, that will be listed by the design-build entity at the time of the bid. In selecting the subcontractors that will be listed by the design-build entity, the department shall limit the identification to only those license classifications deemed essential for proper completion of the project. In no event, however, may the department specify more than five licensed subcontractor classifications. In addition, at its discretion, the design-build entity may list an additional two subcontractors, identified by subcontractor license classification, that will perform design or construction work, or both, on the project. In no event shall the design-build entity list at the time of bid a total amount of subcontractors that will perform design or construction work, or both, in a total of more than seven subcontractor license classifications on a project. All subcontractors that are listed at the time of bid shall be afforded all of the protection contained in Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code. All subcontracts that were not listed by the design-build entity at the time of bid shall be awarded in accordance with paragraph (2).

(2) All subcontracts that were not to be performed by the design-build entity in accordance with paragraph (1) shall be competitively bid and awarded by the design-build entity, in accordance with the design-build process set forth by the department in the design-build package. The design-build entity shall do all of the following:

(A) Provide public notice of the availability of work to be subcontracted in accordance with Section 10140 of the Public Contract Code.

(B) Provide a fixed date and time on which the subcontracted work will be awarded in accordance with Section 10141 of the Public Contract Code.

(C) As authorized by the department, establish reasonable prequalification criteria and standards, limited in scope to those detailed in paragraph (2) of subdivision (d).

(D) Provide that the subcontracted work shall be awarded to the lowest responsible bidder.

(f) For purposes of this section, "best interests of the state" shall mean a design-build process that is projected by the director to reduce the project delivery schedule and total cost of a project while maintaining a high level of quality workmanship and materials, when compared to the traditional design-bid-build process.

(g) This section shall not be construed and is not intended to extend or limit the authority specified in Section 19130.

(h) Any design-build entity that is selected to design and build a project pursuant to this section shall possess or obtain sufficient bonding consistent with applicable provisions of the Public Contract Code. Nothing in this section shall prohibit a general or engineering contractor from being designated the lead entity on a design-build entity for the purposes of purchasing necessary bonding to cover the activities of the design-build entity.

(i) Any payment or performance bond written for the purposes of this section shall use a bond form developed by the Department of General Services. In developing the bond form, the department shall consult with the surety industry to achieve a bond form that is consistent with surety industry standards, while protecting the interests of the state.

SEC. 4. Sections 2 and 3 of this act shall remain operative only until the completion of at least five design-build projects, each with a value of ten million dollars ($10,000,000) or more, or until January 1, 2006, whichever occurs later.

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 that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 253

An act to amend Sections 7100 and 7100.1 of the Health and Safety Code, and to amend Section 7600.6 of the Probate Code, relating to human remains.

[Approved by Governor August 3, 1998. Filed with Secretary of State August 4, 1998.]

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

SECTION 1. Section 7100 of the Health and Safety Code is amended to read:

7100. (a) The right to control the disposition of the remains of a deceased person, the location and conditions of interment, and

arrangements for funeral goods and services to be provided, unless other directions have been given by the decedent pursuant to Section 7100.1, vests in, and the duty of disposition and the liability for the reasonable cost of disposition of the remains devolves upon, the following in the order named:

(1) An attorney-in-fact under a durable power of attorney for health care executed pursuant to Chapter 1 (commencing with Section 4600) of Part 4 of Division 4.5 of the Probate Code.

(2) The surviving spouse.

(3) The sole surviving adult child of the decedent, or if there is more than one adult child of the decedent, one-half or more of the surviving adult children. However, less than one-half of the surviving adult children shall be vested with the rights and duties of this section if they have used reasonable efforts to notify all other surviving adult children of their instructions and are not aware of any opposition to those instructions on the part of more than one-half of all surviving adult children. For purposes of this section, "adult child" means a competent natural or adopted child of the decedent who has attained 18 years of age.

(4) The surviving parent or parents of the decedent. If one of the surviving parents is absent, the remaining parent shall be vested with the rights and duties of this section after reasonable efforts have been unsuccessful in locating the absent surviving parent.

(5) The surviving competent adult person or persons respectively in the next degrees of kindred. If there is more than one surviving person of the same degree of kindred, the majority of those persons. Less than the majority of surviving persons of the same degree of kindred shall be vested with the rights and duties of this section if those persons have used reasonable efforts to notify all other surviving persons of the same degree of kindred of their instructions and are not aware of any opposition to those instructions on the part of one-half or more of all surviving persons of the same degree of kindred.

(6) The public administrator when the deceased has sufficient assets.

(b) (1) If any person to whom the right of control has vested pursuant to subdivision (a) has been charged with first or second degree murder or voluntary manslaughter in connection with the decedent's death and those charges are known to the funeral director or cemetery authority, the right of control is relinquished and passed on to the next of kin in accordance with subdivision (a).

(2) If the charges against the person are dropped, or if the person is acquitted of the charges, the right of control is returned to the person.

(3) Notwithstanding this subdivision, no person who has been charged with first or second degree murder or voluntary manslaughter in connection with the decedent's death to whom the right of control has not been returned pursuant to paragraph (2) shall

have any right to control disposition pursuant to subdivision (a) which shall be applied, to the extent the funeral director or cemetery authority know about the charges, as if that person did not exist.

(c) A funeral director or cemetery authority shall have complete authority to control the disposition of the remains, and to proceed under this chapter to recover usual and customary charges for the disposition, when both of the following apply:

(1) Either of the following applies:

(A) The funeral director or cemetery authority has knowledge that none of the persons described in paragraphs (1) to (6), inclusive, of subdivision (a) exists.

(B) None of the persons described in paragraphs (1) to (6), inclusive, of subdivision (a) can be found after reasonable inquiry, or contacted by reasonable means.

(2) The public administrator fails to assume responsibility for disposition of the remains within seven days after having been given written notice of the facts. Written notice may be delivered by hand, U.S. mail, facsimile transmission, or telegraph.

(d) The liability for the reasonable cost of final disposition devolves jointly and severally upon all kin of the decedent in the same degree of kindred and upon the estate of the decedent. However, if a person accepts the gift of an entire body under subdivision (a) of Section 7155.5, that person, subject to the terms of the gift, shall be liable for the reasonable cost of final disposition of the decedent.

(e) This section shall be administered and construed to the end that the expressed instructions of the decedent or the person entitled to control the disposition shall be faithfully and promptly performed.

(f) A funeral director or cemetery authority shall not be liable to any person or persons for carrying out the instructions of the decedent or the person entitled to control the disposition.

(g) For purposes of paragraph (5) of subdivision (a), "competent adult" means an adult who has not been declared incompetent by a court of law or who has been declared competent by a court of law following a declaration of incompetence.

SEC. 2. Section 7100.1 of the Health and Safety Code is amended to read:

7100.1. (a) A decedent, prior to death, may direct, in writing, the disposition of his or her remains and specify funeral goods and services to be provided. Unless there is a statement to the contrary that is signed and dated by the decedent, the directions may not be altered, changed, or otherwise amended in any material way, except as may be required by law, and shall be faithfully carried out upon his or her death, provided both of the following requirements are met: (1) the directions set forth clearly and completely the final wishes of the decedent in sufficient detail so as to preclude any material ambiguity with regard to the instructions; and, (2) arrangements for payment through trusts, insurance, commitments

by others, or any other effective and binding means, have been made, so as to preclude the payment of any funds by the survivor or survivors of the deceased that might otherwise retain the right to control the disposition.

(b) In the event arrangements for only one of either the cost of interment or the cost of the funeral goods and services are made pursuant to this section, the remaining wishes of the decedent shall be carried out only to the extent that the decedent has sufficient assets to do so, unless the person or persons that otherwise have the right to control the disposition and arrange for funeral goods and services agree to assume the cost. All other provisions of the directions shall be carried out.

(c) If the directions are contained in a will, they shall be immediately carried out, regardless of the validity of the will in other respects or of the fact that the will may not be offered for or admitted to probate until a later date.

SEC. 3. Section 7600.6 of the Probate Code is amended to read:

7600.6. A funeral director in control of the decedent's remains pursuant to subdivision (c) of Section 7100 of the Health and Safety Code shall notify the public administrator if none of the persons described in paragraphs (2) to (6), inclusive, of subdivision (a) of Section 7100 of the Health and Safety Code exist, can be found after reasonable inquiry, or can be contacted by reasonable means.

CHAPTER 254

An act to amend Section 121135 of the Health and Safety Code, relating to health.

[Approved by Governor August 3, 1998. Filed with Secretary of State August 4, 1998.]

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

SECTION 1. Section 121135 of the Health and Safety Code is amended to read:

121135. Notwithstanding Chapter 7 (commencing with Section 120975) or any other provision of law, the blood or other tissue or material of a source patient may be tested, and an exposed individual may be informed of the HIV status of the patient, if the exposed individual and the health care facility, if any, have substantially complied with the then applicable guidelines of the Division of Occupational Safety and Health and the State Department of Health Services and if the following procedure is followed:

(a) (1) Whenever an individual becomes an exposed individual by experiencing an exposure to the blood or other potentially infectious material of a patient during the course of rendering

health-care-related services or occupational services, the exposed individual may request an evaluation of the exposure by a physician to determine if it is a significant exposure as defined in subdivision (h) of Section 121132. No physician or other exposed individual shall certify his or her own significant exposure. However, an employing physician may certify the exposure of one of his or her employees. Requests for certification shall be made in writing within 72 hours of the exposure.

(2) A written certification by a physician of the significance of the exposure shall be obtained within 72 hours of the request. The certification shall include the nature and extent of the exposure.

(b) (1) The exposed individual shall be counseled regarding the likelihood of transmission, the limitations of an HIV test, the need for followup testing, and the procedures that the exposed individual must follow regardless of the HIV status of the source patient. The exposed individual may be tested in accordance with the then applicable guidelines or standards of the Division of Occupational Safety and Health. The result of this test shall be confirmed as negative before available blood or other patient samples of the source patient may be tested for evidence of HIV infection without the consent of the source patient pursuant to subdivision (d).

(2) Within 72 hours of certifying the exposure as significant, the certifying physician shall provide written certification to an attending physician of the source patient that a significant exposure to an exposed individual has occurred, and shall request information on the HIV status of the source patient and the availability of blood or other patient sample. An attending physician shall respond to the request for information within three working days.

(c) If the HIV status of the source patient is already known to be positive, then, except as provided in subdivisions (b) and (c) of Section 121010 when the exposed individual is a health care provider or an employee or agent of the health care provider of the source patient, an attending physician and surgeon of the source patient shall attempt to obtain the consent of the source patient to disclose to the exposed individual the HIV status of the source patient. If the source patient cannot be contacted or refuses to consent to the disclosure, then the exposed individual may be informed of the HIV status of the source patient by an attending physician of the source patient as soon as possible after the exposure has been certified as significant, notwithstanding Section 120980 or any other provision of law.

(d) If the HIV status of the source patient is unknown to the certifying physician or an attending physician, if blood or other patient samples are available, and if the exposed individual has tested negative on a baseline HIV test, the source patient shall be given the opportunity to give informed consent to an HIV test in accordance with the following:

(1) Within 72 hours after receiving a written certification of significant exposure, an attending physician of the source patient shall do all of the following:

(A) Make a good faith effort to notify the source patient or the authorized legal representative of the source patient about the significant exposure. A good faith effort to notify includes, but is not limited to, a documented attempt to locate the source patient by telephone or by first-class mail with certificate of mailing. An attempt to locate the source patient and the results of that attempt shall be documented in the medical record of the source patient. An inability to contact the source patient, or legal representative of the source patient, after a good faith effort to do so as provided in this subdivision, shall constitute a refusal of consent pursuant to paragraph (2).

(B) Attempt to obtain the voluntary informed consent of the source patient or the authorized legal representative of the source patient to perform an HIV test on the source patient or on any available blood or patient sample of the source patient. The voluntary informed consent shall be in writing. The source patient shall have the option not to be informed of the test result. An exposed individual shall be prohibited from attempting to obtain directly informed consent for HIV testing from the source patient. If a source patient is incapacitated and therefore is unable to provide informed consent and has no authorized legal representative, then HIV testing on the source patient or available blood or tissue of the source patient shall not be permitted.

(C) Provide the source patient with medically appropriate pretest counseling and refer the source patient to appropriate posttest counseling and followup if necessary. The source patient shall be offered medically appropriate counseling whether or not he or she consents to testing.

(2) If the source patient or the authorized legal representative of the source patient refuses to consent to an HIV test after a documented effort has been made to obtain consent, then any available blood or patient sample of the source patient may be tested. The source patient or authorized legal representative of the source patient shall be informed that an available blood sample or other tissue or material will be tested despite his or her refusal, and that the exposed individual shall be informed of the HIV test results.

(3) If the informed consent of the source patient cannot be obtained because the source patient is deceased, consent to perform an HIV test on any blood or patient sample of the source patient legally obtained in the course of providing health care services at the time of the exposure event shall be deemed granted.

(4) A source patient or the authorized legal representative of a source patient shall be advised that he or she shall be informed of the results of the HIV test only if he or she wishes to be so informed. If a patient refuses to provide informed consent to HIV testing and

refuses to learn the results of HIV testing, then he or she shall sign a form documenting this refusal. The source patient's refusal to sign this form shall be construed to be a refusal to be informed of the HIV test results. HIV test results shall only be placed in the medical record when the patient has agreed in writing to be informed of the results.

(5) Notwithstanding any other provision of law, if the source patient or authorized legal representative of a source patient refuses to be informed of the results of the test, then the HIV test results of that source patient shall only be provided to the exposed individual in accordance with the then applicable regulations established by the Division of Occupational Safety and Health.

(6) The source patient's identity shall be encoded on the HIV test result record.

(e) If an exposed individual is informed of the HIV status of a source patient pursuant to this section, the exposed individual shall be informed that he or she is subject to existing confidentiality protections for any identifying information about the HIV test results, and that HIV-related medical information of the source patient shall be kept confidential and may not be further disclosed, except as otherwise authorized by law. The exposed individual shall be informed of the penalties for which he or she would be personally liable for violation of Section 120980.

(f) The costs for the HIV test and counseling of the exposed individual, or the source patient, or both shall be borne by the employer of the exposed individual, if any. An employer who directs and controls the exposed individual shall provide the postexposure evaluation and followup required by the California Division of Occupational Safety and Health as well as the testing and counseling for source patients required under this chapter. If an exposed individual is a volunteer or a student, then the health care provider or first responder that assigned a task to the volunteer or student may pay for the costs of testing and counseling as if that volunteer or student were an employee. If an exposed individual, who is not an employee of a health facility or of another health care provider, chooses to obtain postexposure evaluation or followup counseling, or both, or treatment, then he or she shall be financially responsible for the costs thereof and shall be responsible for the costs of the testing and counseling for the source patient.

(g) Nothing in this section authorizes the disclosure of the source patient's identity.

(h) Nothing in this section shall authorize a health care provider to draw blood or other body fluids except as otherwise authorized by law.

(i) The provisions of this section are cumulative only and shall not preclude HIV testing of source patients as authorized by any other provision of law.

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CHAPTER 255

An act to add Sections 25297.15, 25299.37.2, and 25355.8 to the Health and Safety Code, and to add Section 13307.1 to the Water Code, relating to the environment.

[Approved by Governor August 3, 1998. Filed with Secretary of State August 4, 1998.]

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

SECTION 1. Section 25297.15 is added to the Health and Safety Code, to read:

25297.15. (a) (1) The local agency shall not consider cleanup or site closure proposals from the primary or active responsible party, issue a closure letter, or make a determination that no further action is required with respect to a site upon which there was an unauthorized release of hazardous substances from an underground storage tank subject to this chapter unless all current record owners of fee title to the site of the proposed action have been notified of the proposed action by the primary or active responsible party.

(2) Notwithstanding subdivision (g) of Section 25297.1, the local agency shall also notify the primary or active responsible party of their responsibility under this subdivision.

(3) The primary or active responsible party shall certify to the local agency in writing that the notification requirement in this subdivision has been met and provide a complete mailing list of all record fee title owners to the local agency.

(b) The local agency shall take all reasonable steps necessary to accommodate responsible landowner participation in the cleanup or site closure process and shall consider all input and recommendations from any responsible landowner wishing to participate.

SEC. 2. Section 25299.37.2 is added to the Health and Safety Code, to read:

25299.37.2. (a) The local agency, the board, or a regional board shall not consider corrective action or site closure proposals from the primary or active responsible party, issue a closure letter, or make a determination that no further corrective action is required with respect to a site upon which there was an unauthorized release of petroleum from an underground storage tank subject to this chapter unless all current record owners of fee title to the site of the proposed action have been notified of the proposed action by the local agency, board, or regional board.

(b) The local agency, board, or regional board shall take all reasonable steps necessary to accommodate responsible landowner participation in the cleanup or site closure process and shall consider all input and recommendations from any responsible landowner wishing to participate.

SEC. 3. Section 25355.8 is added to the Health and Safety Code, to read:

25355.8. (a) The department shall not agree to oversee the preparation of, or to review, a preliminary endangerment assessment for property if action is, or may be, necessary to address a release or threatened release of a hazardous substance, and the department shall not issue a letter stating that no further action is necessary with regard to property, unless the person requesting the department action does either of the following:

(1) Provides the department with all of the following:

(A) Proof of the identity of all current record owners of fee title to the property and their mailing addresses.

(B) Written evidence that the owners of record have been sent a notice that describes the actions completed or proposed by the requesting person.

(C) An acknowledgment of the receipt of the notice required in subparagraph (B), from the property owners or proof that the requesting person has made reasonable efforts to deliver the notice to the property owner and was unable to do so.

(2) Proof of the identity of all current record owners of fee title to the property and proof that the requesting person has made reasonable efforts to locate the property owners and was unable to do so.

(b) The department shall take all reasonable steps necessary to accommodate property owner participation in the site remediation process and shall consider all input and recommendations received from the owner of property which is the subject of the proposed action.

(c) This section only applies to instances where a person requests the department to oversee the preparation of, or to review, a preliminary endangerment assessment, or requests the department to issue a letter stating that no further action is necessary with regard to property. Nothing in this section imposes a condition upon, limits, or impacts in any way, the department's authority to compel any potentially responsible party to take any action in response to a release or threatened release of a hazardous substance or to recover costs incurred from any potentially responsible party.

SEC. 4. Section 13307.1 is added to the Water Code, to read:

13307.1. (a) The state board and the regional boards shall not consider cleanup or site closure proposals from the primary or active responsible discharger, issue a closure letter, or make a determination that no further action is required with respect to a site subject to a cleanup or abatement order pursuant to Section 13304, unless all current record owners of fee title to the site of the proposed action have been notified of the proposed action by the state board or regional board.

(b) The state board and regional boards shall take all reasonable steps necessary to accommodate responsible landowner

participation in the cleanup or site closure process and shall consider all input and recommendations from any responsible landowner wishing to participate.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a 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, within the meaning of Section 17556 of the Government Code.

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

CHAPTER 256

An act to amend Section 2800.3 of Vehicle Code, relating to vehicles.

[Approved by Governor August 3, 1998. Filed with Secretary of State August 4, 1998.]

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

SECTION 1. Section 2800.3 of the Vehicle Code is amended to read:

2800.3. Whenever willful flight or attempt to elude a pursuing peace officer in violation of Section 2800.1 proximately causes death or serious bodily injury to any person, the person driving the pursued vehicle, upon conviction, shall be punished by imprisonment in the state prison for three, four, or five years, by imprisonment in the county jail for not more than one year, or by a fine of not less than two thousand dollars ($2,000) nor more than ten thousand dollars ($10,000), or by both that fine and imprisonment.

For purposes of this section, "serious bodily injury" has the same meaning as defined in paragraph (4) of subdivision (f) of Section 243 of the Penal Code.

CHAPTER 257

An act to amend Section 27644 of the Food and Agricultural Code, relating to eggs.

[Approved by Governor August 3, 1998. Filed with Secretary of State August 4, 1998.]

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

SECTION 1. Section 27644 of the Food and Agricultural Code is amended to read:

27644. (a) It is unlawful for an egg handler, as defined in Section 27510, to sell, offer for sale, or expose for sale eggs that are packed or graded for human consumption unless at least one of the following conditions is met:

(1) The consumer container is plainly, legibly, and conspicuously labeled "KEEP REFRIGERATED" or with words of similar meaning.

(2) A conspicuous sign is posted at the point of sale for eggs on bulk display advising consumers that the eggs are to be refrigerated as soon as practical after purchase.

(b) Except as provided in subdivision (c), it is unlawful for an egg handler to sell, offer for sale, or expose for sale eggs that are packed for human consumption unless each container intended for sale to the ultimate consumer is labeled on one outside top, side, or end with all of the following:

(1) (A) The words "Sell-by" immediately followed by the month and day in bold type, for example "June 30" or "6-30." Common abbreviations of months shall be permitted.

(B) The sell-by date shall not exceed 30 days from the date on which the eggs were packed, excluding the date of packing.

(C) If the eggs are repacked but not regraded, the original sell-by date shall apply.

(2) A Julian pack date. As used in this paragraph, the Julian pack date is the consecutive day of the year on which the eggs were packed.

(3) The identification number of the plant of origin.

(c) Paragraph (1) of subdivision (b) does not apply to eggs that are packaged for export, including export to other states and territories of the United States, and foreign countries, and eggs that are packaged for military sales.

(d) All eggs returned from grocery stores, store warehouses, and institutions shall not be reprocessed for retail shell egg sales.

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 that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative

on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 258

An act to amend Section 4532 of the Penal Code, relating to home detention.

[Approved by Governor August 3, 1998. Filed with Secretary of State August 4, 1998.]

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

SECTION 1. Section 4532 of the Penal Code is amended to read:

4532. (a) (1) Every prisoner arrested and booked for, charged with, or convicted of a misdemeanor, and every person committed under the terms of Section 5654, 5656, or 5677 of the Welfare and Institutions Code as an inebriate, who is confined in any county or city jail, prison, industrial farm, or industrial road camp, is engaged on any county road or other county work, is in the lawful custody of any officer or person, is employed or continuing in his or her regular educational program or authorized to secure employment or education away from the place of confinement, pursuant to the Cobey Work Furlough Law (Section 1208), is authorized for temporary release for family emergencies or for purposes preparatory to his or her return to the community pursuant to Section 4018.6, or is a participant in a home detention program pursuant to Section 1203.016, and who thereafter escapes or attempts to escape from the county or city jail, prison, industrial farm, or industrial road camp or from the custody of the officer or person in charge of him or her while engaged in or going to or returning from the county work or from the custody of any officer or person in whose lawful custody he or she is, or from the place of confinement in a home detention program pursuant to Section 1203.016, is guilty of a felony and, if the escape or attempt to escape was not by force or violence, is punishable by imprisonment in the state prison for a determinate term of one year and one day, or in a county jail not exceeding one year.

(2) If the escape or attempt to escape described in paragraph (1) is committed by force or violence, the person is guilty of a felony, punishable by imprisonment in the state prison for two, four, or six years to be served consecutively, or in a county jail not exceeding one year. When the second term of imprisonment is to be served in a county jail, it shall commence from the time the prisoner otherwise would have been discharged from jail.

(3) A conviction of a violation of this subdivision, or a violation of subdivision (b) involving a participant of a home detention program

pursuant to Section 1203.016, that is not committed by force or violence, shall not be charged as a prior felony conviction in any subsequent prosecution for a public offense.

(b) (1) Every prisoner arrested and booked for, charged with, or convicted of a felony, and every person committed by order of the juvenile court, who is confined in any county or city jail, prison, industrial farm, or industrial road camp, is engaged on any county road or other county work, is in the lawful custody of any officer or person, or is confined pursuant to Section 4011.9, is a participant in a home detention program pursuant to Section 1203.016, who escapes or attempts to escape from a county or city jail, prison, industrial farm, or industrial road camp or from the custody of the officer or person in charge of him or her while engaged in or going to or returning from the county work or from the custody of any officer or person in whose lawful custody he or she is, or from confinement pursuant to Section 4011.9, or from the place of confinement in a home detention program pursuant to Section 1203.016, is guilty of a felony and, if the escape or attempt to escape was not by force or violence, is punishable by imprisonment in the state prison for 16 months, two years, or three years, to be served consecutively, or in a county jail not exceeding one year.

(2) If the escape or attempt to escape described in paragraph (1) is committed by force or violence, the person is guilty of a felony, punishable by imprisonment in the state prison for a full term of two, four, or six years to be served consecutively to any other term of imprisonment, commencing from the time the person otherwise would have been released from imprisonment and the term shall not be subject to reduction pursuant to subdivision (a) of Section 1170.1, or in a county jail for a consecutive term not to exceed one year, that term to commence from the time the prisoner otherwise would have been discharged from jail.

(c) (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 offense under this section in that he or she escaped or attempted to escape from a secure main jail facility, from a court building, or while being transported between the court building and the jail facility.

(2) In any case in which a person is convicted of a violation of this section designated as a misdemeanor, he or she shall be confined in a county jail for not less than 90 days nor more than one year except in unusual cases where the interests of justice would best be served by the granting of probation.

(3) For the purposes of this subdivision, "main jail facility" means the facility used for the detention of persons pending arraignment, after arraignment, during trial, and upon sentence or commitment. The facility shall not include an industrial farm, industrial road camp, work furlough facility, or any other nonsecure facility used primarily for sentenced prisoners. As used in this subdivision, "secure" means

that the facility contains an outer perimeter characterized by the use of physically restricting construction, hardware, and procedures designed to eliminate ingress and egress from the facility except through a closely supervised gate or doorway.

(4) If the court grants probation under this subdivision, it shall specify the reason or reasons for that order on the court record.

(5) Any sentence imposed under this subdivision shall be served consecutive to any other sentence in effect or pending.

(d) The willful failure of a prisoner, whether convicted of a felony or a misdemeanor, to return to his or her place of confinement no later than the expiration of the period that he or she was authorized to be away from that place of confinement, is an escape from that place of confinement. This subdivision applies to a prisoner who is employed or continuing in his or her regular educational program, authorized to secure employment or education pursuant to the Cobey Work Furlough Law (Section 1208), authorized for temporary release for family emergencies or for purposes preparatory to his or her return to the community pursuant to Section 4018.6, or permitted to participate in a home detention program pursuant to Section 1203.016. A prisoner convicted of a misdemeanor who willfully fails to return to his or her place of confinement under this subdivision shall be punished as provided in paragraph (1) of subdivision (a). A prisoner convicted of a felony who willfully fails to return to his or her place of confinement shall be punished as provided in paragraph (1) of subdivision (b).

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 that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 259

An act to amend Section 19418 of the Business and Professions Code, to add Section 4163 to the Food and Agricultural Code, to add Section 116556 to the Health and Safety Code, to amend Section 5782.27 of the Public Resources Code, and to amend Section 55310.2 of the Water Code, relating to government, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 3, 1998. Filed with
Secretary of State August 4, 1998.]

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

SECTION 1. Section 19418 of the Business and Professions Code is amended to read:

19418. (a) "State designated fairs," referred to in this chapter as fairs, means the California Exposition and State Fair in the City of Sacramento and those fairs specified in Sections 19418.1, 19418.2, and 19418.3 that may receive financial support or are otherwise governed pursuant to this chapter. These fairs may also be referred to as part of the "network of California fairs."

(b) A nonprofit organization that holds an annual fair pursuant to Section 4163 of the Food and Agricultural Code may elect to be a member of the network of California fairs on terms and conditions mutually agreed upon by the Department of Food and Agriculture and the nonprofit corporation.

SEC. 2. Section 4163 is added to the Food and Agricultural Code, to read:

4163. (a) With the consent of the secretary, a nonprofit organization may hold an annual fair in lieu of the annual fair held by the 25th District Agricultural Association.

(b) Notwithstanding any other provision of law, the department may enter into contracts with the nonprofit organization referred to in subdivision (a) for the receipt of public funds.

(c) Notwithstanding any other provision of law, the Director of General Services, with the consent of, and on terms approved by the secretary, may lease certain premises commonly known as the Napa Valley Expo, containing approximately 37 acres situated in the County and City of Napa, to the nonprofit organization referred to in subdivision (a) for a period not to exceed 99 years, to hold an annual fair pursuant to subdivision (a). While the lease is in effect, the nonprofit organization shall be deemed to be an instrumentality of the state for the limited purpose of carrying out the authority granted the 25th District Agricultural Association by Sections 4161 and 4162. While the lease is in effect, the 25th District Agricultural Association shall be inactive, and shall not have any powers or duties.

(d) The lease executed pursuant to this section may be for less than the market value of the property, and shall include a provision that the lease may be canceled if the lessee or its successors or assignees does any of the following:

(1) Fails to hold an annual fair.

(2) Fails to make a seat on its board of directors available to the Mayor of Napa and the Chairperson of the Napa County Board of Supervisors for the duration of the lease.

(3) Fails, in any calendar year, to hold at least two meetings of its board of directors, open to the public, in the City of Napa.

(e) Prior to the commencement of the term of the lease, the lessee and the Department of Food and Agriculture shall ensure that every employee in the civil service of the 25th District Agricultural Association is provided with the option of continuing his or her employment with the state, or of accepting a position as an employee of the lessee.

(1) With respect to an employee who chooses to continue his or her employment with the state, the employee shall continue to be subject to all of the provisions governing civil service employees, and additionally, all of the following shall apply:

(A) The lessee shall contract with the department for the services of the employee, consistent with his or her civil service classification and status.

(B) The employee has the right to continue to provide services to the lessee pursuant to that contract during the time the employee continues in the civil service classification he or she held at the time of the employee's election.

(2) With respect to an employee who chooses to leave his or her employment with the state and become an employee of the lessee, those employees are not employees of the state, and are not subject to the requirements of Chapter 10.3 (commencing with Section 3512) and Chapter 10.5 (commencing with Section 3525) of Division 4 of Title 1 of the Government Code.

(3) If a position filled by a civil service employee pursuant to contract with the department becomes vacant, the lessee may fill the position with a non-civil-service employee.

(f) The State of California is not liable for any debts, liabilities, settlements, liens, or any other obligations incurred by or imposed upon the nonprofit organization referred to in subdivision (a). The lease executed pursuant to this section shall expressly provide that the General Fund and the Fair and Exposition Fund shall be held harmless from all debts, liabilities, settlements, judgments, or liens incurred by the nonprofit organization, and that neither the state nor any agency or division thereof shall be liable for any contract, tort, action or inaction, error in judgment, mistakes, or other acts taken by the nonprofit organization, or any of its employees, agents, servants, invitees, guests, or anyone acting in concert with, or on the behalf of, the nonprofit organization.

SEC. 3. Section 116556 is added to the Health and Safety Code, to read:

116556. Notwithstanding subdivision (c) of Section 116555 and its implementing regulations, including Sections 64562 and 64568 of the California Code of Regulations, the Redwood Valley County Water District, in order to relieve hardship, may make not more than 135 new $^{3}/_{4}$-inch equivalent domestic service connections to its water system if all of the following conditions are met:

(a) The district has a contract, agreement, or independent water right to divert water from Lake Mendocino or another adequate source of water supply.

(b) Redwood Valley is an allowed place of use under that contract, agreement, or water right.

(c) The department has determined that the water source provides an adequate physical supply of water under its duly adopted waterworks standards.

(d) The connection will relieve hardship, as determined by the district based on objective proof that the structure served by the connection was constructed prior to December 31, 1997, and absent a connection, only has access to a water supply that furnishes an inadequate quality or quantity of water as measured by drinking water standards adopted by the district.

(e) The connections authorized by this section are in addition to connections otherwise allowed by law, including connections authorized by Section 116555.

SEC. 4. Section 5782.27 of the Public Resources Code is amended to read:

5782.27. (a) In addition to the powers which may be exercised pursuant to this chapter, the Camp Meeker Recreation and Park District may exercise the powers of a county water district as set forth in Article 1 (commencing with Section 31000) to Article 6 (commencing with Section 31100), inclusive, of Part 5 of Division 12 of the Water Code, Part 6 (commencing with Section 31300) of Division 12 of the Water Code, and Part 7 (commencing with Section 31650) of Division 12 of the Water Code.

(b) The powers granted to the Camp Meeker Recreation and Park District by this section may be exercised by the district only if the authority to exercise these powers is approved by the local agency formation commission and if the exercise of these powers conforms to Article XIII C of the California Constitution.

SEC. 5. Section 55310.2 of the Water Code is amended to read:

55310.2. (a) Notwithstanding Section 55301, the Board of Directors of the Mendocino County Waterworks District #2 shall be elected. The elected board of directors shall act as the governing board of the district.

(b) There shall be five members of the board who shall be elected at large throughout the district. The directors shall be residents of the district at the time of election and shall remain residents throughout their term. Failure to maintain residency shall cause the director to vacate the office. The directors shall serve four-year terms. The election of directors shall be held by the all-mailed ballot procedure pursuant to Division 4 (commencing with Section 4000) of the Elections Code on the date described in Section 1501 of the Elections Code.

(c) Elections for the directors shall be conducted by the county clerk or by another election officer designated by the Mendocino

Board of Supervisors. The district shall be responsible for the cost of the district elections.

(d) Unless otherwise provided or required by this section, Part 4 (commencing with Section 10500) of Division 10 of the Elections Code shall apply to the conduct of the district election.

(e) Any vacancy on the board, other than upon the expiration of a term, shall be filled by a majority vote of the directors. However, no vacancy shall be filled by less than three members' affirmative votes. If the board fails to fill a vacancy within 60 days of the vacancy or if the membership of the board is less than four, the Mendocino County Board of Supervisors may appoint members to fill the vacancies. Appointed members shall serve until the next district election at which time the remainder of the unexpired term shall be filled at that election in the manner provided in this section.

(f) Directors shall be elected without reference to districts and, except for the filling of unexpired terms, without reference to a specific directorship. All candidates for open seats, except for the filling of unexpired terms, shall appear on the same ballot. Voters shall be allowed to vote for the number of candidates equal to the open seats; that number of candidates equal to the number of open seats that receive a plurality shall be elected. Write-in votes shall be counted, provided that the write-in candidate shall have complied with the requirements of subdivision (d) pertaining to the filing of a nomination form and signatures with the county clerk no less than 14 days prior to the election.

(g) Directors duly elected and certified at the first election shall assume office on July 1, 1996. The two-year terms shall expire on June 30, 1998. The first four-year terms shall expire on June 30, 2000. All subsequent terms shall expire on the last day of June in even-numbered years.

(h) Directors shall receive no compensation for service, except as permitted under Section 55305, but may be reimbursed only for necessary and actual expenses. Regulations governing reimbursement may be adopted by the board.

(i) Effective July 1, 1996, the elected Mendocino County Waterworks District #2 Board of Directors shall succeed to and have all the powers previously conferred upon the board of supervisors and the appointed board of directors in reference to this district.

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

In order to allow the Napa Valley Expo, the Redwood Valley County Water District, the Camp Meeker Recreation and Park District, and the Board of Directors of the Mendocino County Waterworks District #2 to operate promptly and effectively to

resolve public concerns, it is necessary for this act to take effect immediately.

CHAPTER 260

An act to amend Sections 54953, 54954, 54954.5, 54956.8, 54957.5, and 54957.6 of the Government Code, relating to public meetings.

[Approved by Governor August 4, 1998. Filed with Secretary of State August 5, 1998.]

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

SECTION 1. Section 54953 of the Government Code 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) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction. The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, ''teleconference'' means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or

video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c) No legislative body shall take action by secret ballot, whether preliminary or final.

SEC. 2. Section 54954 of the Government Code is amended to read:

54954. (a) Each legislative body of a local agency, except for advisory committees or standing committees, 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. Meetings of advisory committees or standing committees, for which an agenda is posted at least 72 hours in advance of the meeting pursuant to subdivision (a) of Section 54954.2, shall be considered for purposes of this chapter as regular meetings of the legislative body.

(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) Comply with state or federal law or court order, or attend a judicial or administrative proceeding to which the local agency is a party.

(2) Inspect real or personal property which cannot be conveniently brought within the boundaries of the territory over which the local agency exercises jurisdiction provided that the topic of the meeting is limited to items directly related to the real or personal property.

(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 any 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. 2.5. Section 54954.5 of the Government Code is amended 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 or 54956 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 NEGOTIATORS

Property: (Specify street address, or if no street address, the parcel number or other unique reference, of the real property under negotiation)

Agency negotiator: (Specify names of negotiators attending the closed session)

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
(Subdivision (a) of Section 54956.9)
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)
(In addition to the information noticed above, the agency may be required to provide additional information on the agenda or in an oral statement prior to the closed session pursuant to subparagraphs (B) to (E), inclusive, of paragraph (3) of subdivision (b) of Section 54956.9.)
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 of a public employee. Discipline includes potential reduction of compensation.)

(f) With respect to every item of business to be discussed in closed session pursuant to Section 54957.6:

CONFERENCE WITH LABOR NEGOTIATORS
Agency designated representatives: (Specify names of designated representatives attending the closed session)
Employee organization: (Specify name of organization representing employee or employees in question)
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
(No additional information is required in connection with a closed session to consider case review or planning.)

(h) With respect to every item of business to be discussed in closed session pursuant to 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)

(i) With respect to every item of business to be discussed in closed session pursuant to Section 54956.86:

CHARGE OR COMPLAINT INVOLVING INFORMATION PROTECTED BY FEDERAL LAW
(No additional information is required in connection with a closed session to discuss a charge or complaint pursuant to Section 54956.86.)

SEC. 3. Section 54956.8 of the Government Code is amended to read:

54956.8. Notwithstanding any other provision of this chapter, a legislative body of a local agency may hold a closed session with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the local agency to grant authority to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

However, prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it identifies its negotiators, the real property or real properties which the negotiations may concern, and the person or persons with whom its negotiators may negotiate.

For purposes of this section, negotiators may be members of the legislative body of the local agency.

For purposes of this section, "lease" includes renewal or renegotiation of a lease.

Nothing in this section shall preclude a local agency from holding a closed session for discussions regarding eminent domain proceedings pursuant to Section 54956.9.

SEC. 4. 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 disclosable 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 upon request without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, or 6254.7.

(b) Writings that are public records under subdivision (a) and that 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 or obtain a copy of 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. 5. Section 54957.6 of the Government Code is amended to read:

54957.6. (a) Notwithstanding any other provision of law, a legislative body of a local agency may hold closed sessions with the local agency's designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees, and, for represented employees, any other matter within the statutorily provided scope of representation.

However, prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it identifies its designated representatives.

Closed sessions of a legislative body of a local agency, as permitted in this section, shall be for the purpose of reviewing its position and instructing the local agency's designated representatives.

Closed sessions, as permitted in this section, may take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees.

Closed sessions with the local agency's designated representative regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits may include discussion of an agency's available funds and funding priorities, but only insofar as these discussions relate to providing instructions to the local agency's designated representative.

Closed sessions held pursuant to this section shall not include final action on the proposed compensation of one or more unrepresented employees.

For the purposes enumerated in this section, a legislative body of a local agency may also meet with a state conciliator who has intervened in the proceedings.

(b) 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.

CHAPTER 261

An act to amend Section 5810 of the Business and Professions Code, relating to interior design.

[Approved by Governor August 5, 1998. Filed with Secretary of State August 6, 1998.]

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

SECTION 1. Section 5810 of the Business and Professions Code is amended to read:

5810. This chapter shall be subject to the review required by Division 1.2 (commencing with Section 473).

This chapter shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2002, deletes or extends that date.

CHAPTER 262

An act to add Section 24305.5 to the Education Code, relating to the State Teachers' Retirement System.

[Approved by Governor August 5, 1998. Filed with Secretary of State August 6, 1998.]

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

SECTION 1. Section 24305.5 is added to the Education Code, to read:

24305.5. (a) An option elected under Section 24300 may be canceled by a retired member if the option beneficiary is not the retired member's spouse or former spouse. A retired member may cancel the option before or after issuance of the first retirement allowance payment and shall designate his or her spouse as the new option beneficiary and the same or a different joint and survivor option described in Section 24300.

(b) The retired member shall notify the board, in writing on a form provided by the system, of the designation of the new option beneficiary.

(c) The effective date of the new election shall be six months following the date notification is received by the board, provided both the retired member and the new designated option beneficiary are both living.

(d) The selection of the new option beneficiary and the new option under this subdivision and Section 24300 is subject to an actuarial modification in the amount of the modified allowance. However, a retired member may not elect a joint and survivor option that would result in any additional liability to the fund. Modification of the retirement allowance because of the new option beneficiary and the new option, shall be based on the ages of the retired member and the new option beneficiary as of the effective date of the new election.

CHAPTER 263

An act to add Section 3304.5 to the Government Code, relating to public safety officers.

[Approved by Governor August 5, 1998. Filed with
Secretary of State August 6, 1998.]

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

SECTION 1. Section 3304.5 is added to the Government Code, to read:

3304.5. An administrative appeal instituted by a public safety officer under this chapter shall be conducted in conformance with rules and procedures adopted by the local public agency.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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

CHAPTER 264

An act to amend Sections 10089.5, 10089.13, 10089.23, 10089.25, and 10089.26 of, and to add Section 10089.24 to, the Insurance Code, relating to earthquake insurance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 5, 1998. Filed with
Secretary of State August 6, 1998.]

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

SECTION 1. Section 10089.5 of the Insurance Code is amended to read:

10089.5. As used in this chapter:

(a) "Authority" means the California Earthquake Authority.

(b) "Available capital" means the sum of all moneys and invested assets actually held in the California Earthquake Authority Fund, except as otherwise allocated to pay specific losses and loss adjustment expenses under policies of basic residential earthquake insurance. "Available capital" includes all interest or other income from the investment of money held in the California Earthquake Authority Fund. "Available capital" does not include the proceeds of contracts of reinsurance procured by or in the name of the authority

pursuant to subdivision (a) of Section 10089.10, or any funds realized on account of any transaction pursuant to capital market contracts authorized by subdivision (b) of Section 10089.10.

(c) "Basic residential earthquake insurance" means that policy of residential earthquake insurance described in Section 10089 except as follows:

(1) (A) If one year after the authority commences operation the authority has available capital equal to or exceeding seven hundred million dollars ($700,000,000), any policy issued or renewed on or after that date shall provide, less any applicable deductible, not less than two thousand five hundred dollars ($2,500) in coverage for additional living expenses.

(B) If the authority met the available capital requirements of subparagraph (A) and two years after the authority commences operation the authority has available capital equal to or exceeding seven hundred million dollars ($700,000,000), any policy issued or renewed on or after that date shall provide, less any applicable deductible, not less than three thousand dollars ($3,000) in coverage for additional living expenses.

(2) (A) If the authority did not meet the available capital requirement of subparagraph (A) of paragraph (1) but, two years after the authority commences operation the authority has available capital equal to or exceeding seven hundred million dollars ($700,000,000), any policy issued or renewed on or after that date shall provide, less any applicable deductible, not less than two thousand five hundred dollars ($2,500) in coverage for additional living expenses.

(B) If the authority met the available capital requirements as provided by subparagraph (A) and three years after the authority commences operation the authority has available capital equal to or exceeding seven hundred million dollars ($700,000,000), any policy issued or renewed on or after that date shall provide, less any applicable deductible, not less than three thousand dollars ($3,000) in coverage for additional living expenses.

(d) "Board" means the governing board of the authority.

(e) "Bonds" means bonds, notes, commercial paper, variable rate and variable maturity securities, and any other evidence of indebtedness.

(f) "Capital market contract" means an agreement between the authority and a purchaser pursuant to which the purchaser agrees to purchase bonds of the authority.

(g) "Nonparticipating insurer" means an insurer that elects not to transfer or place any residential earthquake policies in the authority.

(h) "Panel" means the advisory panel of the authority.

(i) "Participating insurer" means an insurer that has elected to join the authority.

(j) "Policy of residential property insurance" means those policies described in Section 10087.

(k) "Private capital market" means one or more purchasers of bonds of the authority pursuant to a capital market contract.

(*l*) "Qualifying residential property" includes all those residential dwellings set forth in Section 10087.

(m) "Residential earthquake insurance market share" means an individual insurer's total direct premium received for (1) residential earthquake policies and endorsements written or renewed by the insurer in California and (2) residential earthquake policies written or renewed by the authority for which the insurer has written or renewed an underlying policy of residential property insurance, divided by the total gross premiums received by all admitted insurers and the authority for their basic residential earthquake insurance in California.

(n) "Residential property insurance market share" means an individual insurer's total gross premiums received for residential property insurance policies written or renewed by the insurer, divided by the total gross premiums received by all admitted insurers for residential property insurance in California.

(o) "Revenue" means all income and receipts of the authority, including, but not limited to, income and receipts derived from premiums, bond purchase agreements, capital contributions by insurers, assessments levied on insurers, surcharges applied to authority earthquake policyholders, and all interest or other income from investment of money in any fund or account of the authority established for the payment of principal or interest, or premiums on bonds, including reserve funds.

SEC. 2. Section 10089.13 of the Insurance Code is amended to read:

10089.13. (a) One year following its commencement of operations, and annually thereafter by each May 1, the authority shall report to the Legislature and the commissioner on program operations in a format prescribed by the commissioner. The report shall include, but shall not be limited to, the financial condition of the authority, a description of all rates and rating plans approved for use in the authority, an evaluation of the functioning of the authority in light of its stated purpose of making residential property insurance and residential earthquake insurance more available. The report shall also include an analysis of the growth by market share of residential property insurance of participating insurers compared to nonparticipating insurers, any adverse consequences on the various insurance distribution systems resulting from the operation of the authority or alterations in the growth of the residential property insurance market share between participating insurers and nonparticipating insurers, any adverse consequences of the various insurance distribution systems resulting from the operation of the authority or alterations in the growth of homeowners' insurance market share between participating insurers and nonparticipating insurers, and an analysis of any recommended program changes to

permit the authority to better fulfill its stated purpose. In making this determination the board shall be mindful of the competitive nature of the market and how any decision can negatively impact insurers who are currently competing in the marketplace.

(b) The annual report shall include full information describing the following matters relating to the authority's condition and affairs:

(1) The property or assets held by the authority, including the amount of cash on hand and deposited in banks to its credit, the amount of cash in the hands of servicing insurance companies, the amount of any stocks or bonds owned by the authority, specifying the amount, number of shares, and the par and market value of each kind of stock or bond, and all other assets, specifying each.

(2) The liabilities of the authority, including the amount of losses due and unpaid, the amount of claims for losses resisted by the authority and the amount of losses in the process of adjustment or in suspense, including all reported and supposed losses, the amount of revenue bonds or other debt financing issues under Section 10089.29 or Section 10089.50, and all other liabilities.

(3) Income of the authority during the preceding year, specifying premiums received, interest money received, and income from all other sources, specifying the source.

(4) Expenditures of the authority during the preceding year, specifying the amount of losses paid, the amount of expenses paid by category, and the amount of all other payments and expenditures.

(5) The costs and scope of all reinsurance and capital market contracts entered into by the authority under Section 10089.10.

(c) As part of the annual report, the authority shall make a separate, summary report on the financial capacity of the authority to pay claims made against the authority. Copies of this report shall also be made available to the public. The report shall include, but shall not be limited to, the following information, valued as of 30 days prior to the date of the report:

(1) The available capital of the authority.

(2) The liabilities of the authority.

(3) The amount of all assessments previously made and the amount of assessments that may be made in the future under Section 10089.23.

(4) The amount of the reinsurance under contract and actually available to the authority.

(5) The amount of all revenue bonds or other debt financing previously issued or contracted for and the amount of all revenue bonds or other debt financing that may be issued or contracted for in the future under Section 10089.29.

(6) The amount of surcharges previously assessed against policyholders and the amount of surcharges that are currently outstanding against policyholders under Section 10089.29.

(7) The amount of capital committed and actually available by contract from private capital markets that is available to pay claims against the authority.

(8) The amount of all assessments previously made and the amount of all assessments that may be made in the future under Section 10089.30.

(d) In verification of the matters set forth in the annual report provided for in subdivision (a), the Department of Finance shall approve independent qualified auditors selected by the commissioner to examine the books and accounts relating to all matters concerning the financial and program operations of the authority. The commissioner shall file a certified report of the examination with the President pro Tempore of the Senate, the Speaker of the Assembly, the Chairpersons of the Senate and Assembly Insurance Committees, and the Chairperson of the Senate Committee on Judiciary within 10 days of its receipt. Copies of this report shall also be made available to the public. The expense of examining the books and accounts of the authority shall be paid out of the operating funds of the authority.

(e) The authority shall, within 120 days following a seismic event that results in the payment of claims by the authority, and within one year of a major seismic event that results in the payment of claims by the authority, submit to the President pro Tempore of the Senate, the Speaker of the Assembly, the Chairpersons of the Senate and Assembly Insurance Committees, and the Chairperson of the Senate Committee on Judiciary, and the commissioner a concise written report of program operations related to that seismic event. The reports shall include, but not be limited to, progress on payment of claims, claims payments made and anticipated, and the functioning of the authority in response to the seismic event. Copies of this report shall also be made available to the public.

SEC. 3. Section 10089.23 of the Insurance Code is amended to read:

10089.23. (a) (1) If at any time following the payment of earthquake losses the authority's available capital is reduced to less than three hundred fifty million dollars ($350,000,000), or if at any time the authority's available capital is insufficient to pay benefits and continue operations, the authority shall have the power to assess participating insurance companies subject to the maximum limits as set forth in this section and Section 10089.30. The assessment shall be limited to the amount necessary to pay the outstanding or expected claims of the authority and to return the authority's available capital to three hundred fifty million dollars ($350,000,000), as determined by the board, subject to approval by the commissioner.

(2) Each participating insurer's assessment shall be determined by multiplying its residential earthquake insurance market share, as of April 30 of the immediately preceding year or the most recent year

for which premium data not more than one year old are available, by the amount of the total assessment sought by the authority.

(3) Maximum permissible insurer assessments pursuant to this section and Section 10089.30, maximum permissible earthquake policyholder assessments pursuant to Section 10089.29, and maximum permissible bond issuances or other debt financing issued or secured by the Treasurer pursuant to Section 10089.29 shall be reduced uniformly by multiplication of the maximum assessments and other amounts provided in those sections by the percentage of the total residential property insurance market share participation attained by the authority upon its commencement, as described in Section 10089.15. The total amount of all assessments levied on participating insurance companies by the authority pursuant to this section shall not exceed three billion dollars ($3,000,000,000), regardless of the frequency or severity of earthquake losses at any and all times subsequent to the creation of the authority. Once a participating insurer has paid amounts equal to its residential earthquake insurance market share multiplied by three billion dollars ($3,000,000,000) pursuant to this section, the authority's power to assess that insurer under this section shall cease and the authority shall be prohibited from levying additional assessments on that insurer pursuant to this section.

(4) Beginning December 31 of the first year of operations, and each December 31 thereafter, the board shall adjust the maximum permissible insurer assessments pursuant to this section and Section 10089.30, the maximum permissible authority policyholder assessment pursuant to Section 10089.29, and the maximum permissible bond issuances or other debt financing issued or secured by the Treasurer pursuant to Section 10089.29 to reflect the market share of new insurers entering into the authority as authorized by Sections 10089.15 and 10089.16 and participating insurers withdrawing from the authority as authorized by Section 10089.19. The adjustments shall be made in the same manner as authorized by paragraph (3).

(b) In the case of any insurer assessment, the authority shall cause to be sent to each participating insurer a notice of that insurer's assessment, and full payment shall be due within 30 days and shall be overdue after 30 days. Penalties and interest shall be assessed for late payments in the same manner as provided for late payments of the insurer gross premium tax pursuant to Section 12258 of the Revenue and Taxation Code. The board may waive the penalties and interest for good cause shown. The board shall make every effort to assess insurers only for funds reasonably anticipated to be necessary for claims payments and to return the authority's available capital to three hundred fifty million dollars ($350,000,000).

(c) Notwithstanding the other provisions of this section, the aggregate assessment authorized by this section shall be reduced to zero 12 years following the commencement of authority operations.

(d) The authority shall not assess a participating insurer under this section based on any insurance business that is attributable to the insurer selling additional insurance products that supplement or augment the basic residential earthquake insurance provided by the authority.

SEC. 4. Section 10089.24 is added to the Insurance Code, to read:

10089.24. (a) Notwithstanding any other provision of this chapter, the maximum permissible assessment pursuant to Section 10089.23 of a participating insurer that began renewing business into the authority less than 12 months prior to the date of the assessment shall be based on the residential earthquake market share of business actually placed into the authority by the insurer as of the date of the assessment.

(b) Notwithstanding any other provision of this chapter, the maximum permissible assessments pursuant to Section 10089.23 that are permitted for all participating insurers not covered by subdivision (a) shall not be modified to reflect the addition of a new participating insurer until 12 months after that insurer has begun renewing business into the authority.

SEC. 5. Section 10089.25 of the Insurance Code is amended to read:

10089.25. Beginning December 31, 1997, and annually thereafter on the 30th of April, the board shall notify each participating insurer of the maximum earthquake loss funding assessment level that it may be required to meet.

SEC. 6. Section 10089.26 of the Insurance Code is amended to read:

10089.26. (a) The authority shall issue policies of basic residential earthquake insurance, including earthquake loss assessment policies for individual condominium unit properties, to any owner of a qualifying residential property, as long as the owner has secured a policy of residential property insurance from a participating insurer.

(1) For purposes of this section, earthquake loss assessment coverage shall be issued in a minimum amount of fifty thousand dollars ($50,000) for individual condominium units valued at more than one hundred thirty-five thousand dollars ($135,000). Earthquake loss assessment coverage shall be issued in a minimum amount of twenty-five thousand dollars ($25,000) for individual condominium units of one hundred thirty-five thousand dollars ($135,000) in value or less. The value of the land shall be excluded when determining the value of the condominium, as it relates to the earthquake loss assessment coverage offered by the authority.

(2) The panel shall submit to the board, and the board shall approve, rates for earthquake loss assessment coverage that reasonably balance the earthquake loss assessment coverages offered and the potential exposure to earthquake loss resulting from an earthquake loss assessment policy as compared to the coverages

offered and the potential exposure to earthquake loss resulting from residential property other than individual condominium policies.

It is the intent of the Legislature, to the extent practicable, that rates charged by the authority to condominium loss assessment policyholders and residential property owner policyholders are treated equitably, and that a proportionate share of premiums is paid for potential exposure to loss, to the authority.

(b) Nothing in this section shall prohibit a participating or nonparticipating insurer from offering a condominium earthquake loss assessment policy for different amounts of coverage other than those offered by the authority.

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 make certain modifications as soon as possible that are necessary for the efficient operation of the California Earthquake Authority and the continued availability of earthquake insurance to California homeowners, it is necessary that this act take effect immediately.

CHAPTER 265

An act to amend Section 40902 of the Vehicle Code, relating to vehicles.

[Approved by Governor August 5, 1998. Filed with Secretary of State August 6, 1998.]

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

SECTION 1. Section 40902 of the Vehicle Code is amended to read:

40902. (a) (1) The court , pursuant to this section, shall, by rule, provide that the defendant may elect to have a trial by written declaration upon any alleged infraction, as charged by the citing officer, involving a violation of this code or any local ordinance adopted pursuant to this code, other than an infraction cited pursuant to Article 2 (commencing with Section 23152) of Chapter 12 of Division 11.

(2) The Judicial Council may adopt rules and forms governing trials by declaration in accordance with this section. Any rule or form adopted by the Judicial Council pursuant to this paragraph shall supersede any local rule of a court adopted pursuant to paragraph (1).

(b) If the defendant elects to have a trial by written declaration, the defendant shall, at the time of submitting that declaration, submit

bail in the amount established in the uniform traffic penalty schedule pursuant to Section 40310. If the defendant is found not guilty or if the charges are otherwise dismissed, the amount of the bail shall be promptly refunded to the defendant.

(c) Notwithstanding Division 10 (commencing with Section 1200) of the Evidence Code, the rules governing trials by written declaration may provide for testimony and other relevant evidence to be introduced in the form of a notice to appear issued pursuant to Section 40500, a business record or receipt, a sworn declaration of the arresting officer, or a written statement or letter signed by the defendant.

(d) If the defendant is dissatisfied with a decision of the court in a proceeding pursuant to this section, the defendant shall be granted a trial de novo.

CHAPTER 266

An act to add Section 709.6 to the Public Utilities Code, relating to public utilities.

[Approved by Governor August 5, 1998. Filed with Secretary of State August 6, 1998.]

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

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

(a) The Congress of the United States has enacted the Telecommunications Act of 1996 to provide for a procompetitive national policy framework designed to accelerate private sector deployment of advanced telecommunications and information technologies and service to all Americans.

(b) The California Legislature also has enacted procompetitive policies that have placed this state at the forefront in promoting competition in the provision of telecommunications services.

(c) The dramatic changes in the communications industry demand similar changes in the regulatory scheme if California consumers are to enjoy the choice, pricing, simplicity, and other benefits of genuine competition.

SEC. 2. Section 709.6 is added to the Public Utilities Code, to read:

709.6. Not later than January 1, 2000, the commission shall commence a proceeding to consider whether to establish a new regulatory framework that does all of the following:

(a) Ensures that the public has universally available access to basic local exchange service.

(b) Applies appropriate rules to all telecommunications service providers.

(c) Encourages the provision of advanced, high-speed digital telecommunications services to the public.

CHAPTER 267

An act to amend Sections 1801 and 1801.5 of the Welfare and Institutions Code, relating to youthful offenders.

[Approved by Governor August 5, 1998. Filed with Secretary of State August 6, 1998.]

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

SECTION 1. Section 1801 of the Welfare and Institutions Code is amended to read:

1801. (a) If a petition is filed with the court for an order as provided in Section 1800, and, upon review, the court determines that the petition, on its face, supports a finding of probable cause, the court shall order that a hearing be held pursuant to subdivision (b). The court shall notify the person whose liberty is involved, and, if the person is a minor, his or her parent or guardian (if that person can be reached, and, if not, the court shall appoint a person to act in the place of the parent or guardian) of the hearing, and shall afford the person an opportunity to appear at the hearing with the aid of counsel and the right to cross examine experts or other witnesses upon whose information, opinion or testimony the petition is based. The court shall inform the person named in the petition of his or her right of process to compel attendance or relevant witnesses and the production of relevant evidence. When the person is unable to provide his or her own counsel, the court shall appoint counsel to represent him or her.

The probable cause hearing shall be held within 10 calendar days after the date the order is issued pursuant to this subdivision unless the person named in the petition waives this time.

(b) At the probable cause hearing, the court shall receive evidence and determine whether there is probable cause to believe that discharge of the person would be physically dangerous to the public because of his or her mental or physical deficiency, disorder, or abnormality. If the court determines there is not probable cause, the court shall dismiss the petition and the person shall be discharged from the control of the authority at the time required by Section 1766, 1769, 1770, 1770.1, or 1771, as applicable. If the court determines that there is probable cause, the court shall order that a trial be conducted to determine whether the person is physically dangerous to the public because of his or her mental or physical deficiency, disorder, or abnormality.

SEC. 2. Section 1801.5 of the Welfare and Institutions Code is amended to read:

1801.5. If a trial is ordered pursuant to Section 1801, the trial shall be by jury unless the right to a jury trial is personally waived by the person, after he or she has been fully advised of the constitutional rights being waived, and by the prosecuting attorney, in which case trial shall be by the court. If the jury is not waived, the court shall cause a jury to be summoned and to be in attendance at a date stated, not less than four days nor more than 30 days from the date of the order for trial, unless the person named in the petition waives time. The court shall submit to the jury, or, at a court trial, the court shall answer, the question: Is the person physically dangerous to the public because of his or her mental or physical deficiency, disorder, or abnormality? The court's previous order entered pursuant to Section 1801 shall not be read to the jury, nor alluded to in the trial. The person shall be entitled to all rights guaranteed under the federal and state constitutions in criminal proceedings. A unanimous jury verdict shall be required in any jury trial. As to either a court or a jury trial, the standard of proof shall be that of proof beyond a reasonable doubt.

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

CHAPTER 268

An act to amend Section 12071 of the Penal Code, relating to firearms.

[Approved by Governor August 10, 1998. Filed with Secretary of State August 10, 1998.]

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

SECTION 1. Section 12071 of the Penal Code is amended to read:

12071. (a) (1) As used in this chapter, the term "licensee," "person licensed pursuant to Section 12071," or "dealer" means a person who has all of the following:

(A) A valid federal firearms license.

(B) Any regulatory or business license, or licenses, required by local government.

(C) A valid seller's permit issued by the State Board of Equalization.

(D) A certificate of eligibility issued by the Department of Justice pursuant to paragraph (4).

(E) A license issued in the format prescribed by paragraph (6).

(F) Is among those recorded in the centralized list specified in subdivision (e).

(2) The duly constituted licensing authority of a city, county, or a city and county shall accept applications for, and may grant licenses permitting, licensees to sell firearms at retail within the city, county, or city and county. The duly constituted licensing authority shall inform applicants who are denied licenses of the reasons for the denial in writing.

(3) No license shall be granted to any applicant who fails to provide a copy of his or her valid federal firearms license, valid seller's permit issued by the State Board of Equalization, and the certificate of eligibility described in paragraph (4).

(4) A person may request a certificate of eligibility from the Department of Justice and the Department of Justice shall issue a certificate to an applicant if the department's records indicate that the applicant is not a person who is prohibited from possessing firearms.

(5) The department shall adopt regulations to administer the certificate of eligibility program and shall recover the full costs of administering the program by imposing fees assessed to applicants who apply for those certificates.

(6) A license granted by the duly constituted licensing authority of any city, county, or city and county, shall be valid for not more than one year from the date of issuance and shall be in one of the following forms:

(A) In the form prescribed by the Attorney General.

(B) A regulatory or business license that states on its face "Valid for Retail Sales of Firearms" and is endorsed by the signature of the issuing authority.

(C) A letter from the duly constituted licensing authority having primary jurisdiction for the applicant's intended business location stating that the jurisdiction does not require any form of regulatory or business license or does not otherwise restrict or regulate the sale of firearms.

(7) Local licensing authorities may assess fees to recover their full costs of processing applications for licenses.

(b) A license is subject to forfeiture for a breach of any of the following prohibitions and requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the business shall be conducted only in the buildings designated in the license.

(B) A person licensed pursuant to subdivision (a) may take possession of firearms and commence preparation of registers for the sale, delivery, or transfer of firearms at gun shows or events, as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, if the gun show or event is not conducted from any motorized or towed vehicle. A person conducting business pursuant to this subparagraph shall be entitled to conduct business as authorized herein at any gun show or event in the state without regard to the jurisdiction within this state that issued the license pursuant to subdivision (a), provided the person complies with (i) all applicable laws, including, but not limited to, the waiting period specified in subparagraph (A) of paragraph (3), and (ii) all applicable local laws, regulations, and fees, if any.

A person conducting business pursuant to this subparagraph shall publicly display his or her license issued pursuant to subdivision (a), or a facsimile thereof, at any gun show or event, as specified in this subparagraph.

(C) A person licensed pursuant to subdivision (a) may engage in the sale and transfer of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, at events specified in subdivision (g) of Section 12078, subject to the prohibitions and restrictions contained in that subdivision.

A person licensed pursuant to subdivision (a) also may accept delivery of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, outside the building designated in the license, provided the firearm is being donated for the purpose of sale or transfer at an auction or similar event specified in subdivision (g) of Section 12078.

(D) The firearm may be delivered to the purchaser, transferee, or person being loaned the firearm at one of the following places:

(i) The building designated in the license.

(ii) The places specified in subparagraph (B) or (C).

(iii) The place of residence of, the fixed place of business of, or on private property owned or lawfully possessed by, the purchaser, transferee, or person being loaned the firearm.

(2) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be seen.

(3) No firearm shall be delivered:

(A) Prior to April 1, 1997, within 15 days of the application to purchase a pistol, revolver, or other firearm capable of being concealed upon the person, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 15 days of the submission to the department of any correction to the application, or within 15 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later. Prior to April 1, 1997, within 10 days of the application to purchase any firearm that is not a pistol, revolver, or other firearm

capable of being concealed upon the person, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later. On or after April 1, 1997, within 10 days of the application to purchase, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later.

(B) Unless unloaded and securely wrapped or unloaded and in a locked container.

(C) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of his or her identity and age to the dealer.

(D) Whenever the dealer is notified by the Department of Justice that the person is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(4) No pistol, revolver, or other firearm or imitation thereof capable of being concealed upon the person, or placard advertising the sale or other transfer thereof, shall be displayed in any part of the premises where it can readily be seen from the outside.

(5) The licensee shall agree to and shall act properly and promptly in processing firearms transactions pursuant to Section 12082.

(6) The licensee shall comply with Sections 12073, 12076, and 12077, subdivisions (a) and (b) of Section 12072, and subdivision (a) of Section 12316.

(7) The licensee shall post conspicuously within the licensed premises the following warnings in block letters not less than one inch in height:

(A) "IF YOU LEAVE A LOADED FIREARM WHERE A CHILD OBTAINS AND IMPROPERLY USES IT, YOU MAY BE FINED OR SENT TO PRISON."

(B) "IF YOU KEEP A LOADED FIREARM, OR A FIREARM CONCEALABLE UPON THE PERSON, WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 16 GAINS ACCESS TO THE FIREARM, YOU MAY BE GUILTY OF A MISDEMEANOR OR A FELONY, UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE, TO KEEP IT FROM TEMPORARILY FUNCTIONING."

(C) "DISCHARGING FIREARMS IN POORLY VENTILATED AREAS, CLEANING FIREARMS, OR HANDLING AMMUNITION MAY RESULT IN EXPOSURE TO LEAD, A SUBSTANCE KNOWN TO CAUSE BIRTH DEFECTS, REPRODUCTIVE HARM, AND OTHER SERIOUS PHYSICAL INJURY. HAVE ADEQUATE

VENTILATION AT ALL TIMES. WASH HANDS THOROUGHLY AFTER EXPOSURE."

(8) Commencing April 1, 1994, no pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered unless the purchaser, transferee, or person being loaned the firearm presents to the dealer a basic firearms safety certificate.

(9) Commencing July 1, 1992, the licensee shall offer to provide the purchaser or transferee of a firearm, or person being loaned a firearm, with a copy of the pamphlet described in Section 12080 and may add the cost of the pamphlet, if any, to the sales price of the firearm.

(10) The licensee shall not commit an act of collusion as defined in Section 12072.

(11) The licensee shall post conspicuously within the licensed premises a detailed list of each of the following:

(A) All charges required by governmental agencies for processing firearm transfers required by Sections 12076, 12082, and 12806.

(B) All fees that the licensee charges pursuant to Sections 12082 and 12806.

(12) The licensee shall not misstate the amount of fees charged by a governmental agency pursuant to Sections 12076, 12082, and 12806.

(13) The licensee shall report the loss or theft of any firearm that is merchandise of the licensee, any firearm that the licensee takes possession of pursuant to Section 12082, or any firearm kept at the licensee's place of business within 48 hours of discovery to the appropriate law enforcement agency in the city, county, or city and county where the licensee's business premises are located.

(14) In a city and county, or in the unincorporated area of a county with a population of 200,000 persons or more according to the most recent federal decennial census or within a city with a population of 50,000 persons or more according to the most recent federal decennial census, any time the licensee is not open for business, the licensee shall store all firearms kept in his or her licensed place of business using one of the following methods as to each particular firearm:

(A) Store the firearm in a secure facility that is a part of, or that constitutes, the licensee's business premises.

(B) Secure the firearm with a hardened steel rod or cable of at least one-eighth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a bolt cutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises.

(C) Store the firearm in a locked fireproof safe or vault in the licensee's business premises.

(15) The licensing authority in an unincorporated area of a county with a population less than 200,000 persons according to the most

recent federal decennial census or within a city with a population of less than 50,000 persons according to the most recent federal decennial census may impose the requirements specified in paragraph (14).

(16) Commencing January 1, 1994, the licensee shall, upon the issuance or renewal of a license, submit a copy of the same to the Department of Justice.

(17) The licensee shall maintain and make available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, a firearms transaction record.

(18) (A) On the date of receipt, the licensee shall report to the Department of Justice in a format prescribed by the department the acquisition by the licensee of the ownership of a pistol, revolver, or other firearm capable of being concealed upon the person.

(B) The provisions of this paragraph shall not apply to any of the following transactions:

(i) A transaction subject to the provisions of subdivision (n) of Section 12078.

(ii) The dealer acquired the firearm from a wholesaler.

(iii) The dealer is also licensed as a secondhand dealer pursuant to Article 4 (commencing with Section 21625) of Chapter 9 of Division 8 of the Business and Professions Code.

(iv) The dealer acquired the firearm from a person who is licensed as a manufacturer or importer to engage in those activities pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(v) The dealer acquired the firearm from a person who resides outside this state who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(c) (1) As used in this article, "clear evidence of his or her identity and age" means either of the following:

(A) A valid California driver's license.

(B) A valid California identification card issued by the Department of Motor Vehicles.

(2) As used in this article, a "basic firearms safety certificate" means a basic firearms certificate issued to the purchaser, transferee, or person being loaned the firearm by the Department of Justice pursuant to Article 8 (commencing with Section 12800) of Chapter 6.

(3) As used in this section, a "secure facility" means a building that meets all of the following specifications:

(A) All perimeter doorways shall meet one of the following:

(i) A windowless steel security door equipped with both a dead bolt and a doorknob lock.

(ii) A windowed metal door that is equipped with both a dead bolt and a doorknob lock. If the window has an opening of five inches or more measured in any direction, the window shall be covered with steel bars of at least one-half inch diameter or metal grating of at least nine gauge affixed to the exterior or interior of the door.

(iii) A metal grate that is padlocked and affixed to the licensee's premises independent of the door and doorframe.

(B) All windows are covered with steel bars.

(C) Heating, ventilating, air-conditioning, and service openings are secured with steel bars, metal grating, or an alarm system.

(D) Any metal grates have spaces no larger than six inches wide measured in any direction.

(E) Any metal screens have spaces no larger than three inches wide measured in any direction.

(F) All steel bars shall be no further than six inches apart.

(4) As used in this section, "licensed premises," "licensed place of business," "licensee's place of business," or "licensee's business premises" means the building designated in the license.

(5) For purposes of paragraph (17) of subdivision (b):

(A) A "firearms transaction record" is a record containing the same information referred to in Section 178.124a and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations.

(B) A licensee shall be in compliance with the provisions of paragraph (17) of subdivision (b) if he or she maintains and makes available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, the bound book containing the same information referred to in Section 178.124a and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations.

(d) Upon written request from a licensee, the licensing authority may grant an exemption from compliance with the requirements of paragraph (14) of subdivision (b) if the licensee is unable to comply with those requirements because of local ordinances, covenants, lease conditions, or similar circumstances not under the control of the licensee.

(e) Except as otherwise provided in this subdivision, the Department of Justice shall keep a centralized list of all persons licensed pursuant to subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (a). The department may remove from this list any person who knowingly or with gross negligence violates this article. Upon removal of a dealer from this list, notification shall be provided to local law enforcement and licensing authorities in the jurisdiction where the dealer's business is located. The department shall make information about an individual dealer available, upon request, for one of the following purposes only:

(1) For law enforcement purposes.

(2) When the information is requested by a person licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code for determining the validity of the license for firearm shipments.

(3) When information is requested by a person promoting, sponsoring, operating, or otherwise organizing a show or event as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, who possesses a valid certificate of eligibility issued pursuant to Section 12071.1, if that information is requested by the person to determine the eligibility of a prospective participant in a gun show or event to conduct transactions as a firearms dealer pursuant to subparagraph (B) of paragraph (1) of subdivision (b). Information provided pursuant to this paragraph shall be limited to information necessary to corroborate an individual's current license status.

(f) The Department of Justice may inspect dealers to ensure compliance with this article. The department may assess an annual fee, not to exceed eighty-five dollars ($85), to cover the reasonable cost of maintaining the list described in subdivision (e), including the cost of inspections. Dealers whose place of business is in a jurisdiction that has adopted an inspection program to ensure compliance with firearms law shall be exempt from that portion of the department's fee that relates to the cost of inspections. The applicant is responsible for providing evidence to the department that the jurisdiction in which the business is located has the inspection program.

(g) The Department of Justice shall maintain and make available upon request information concerning the number of inspections conducted and the amount of fees collected pursuant to subdivision (f), a listing of exempted jurisdictions, as defined in subdivision (f), the number of dealers removed from the centralized list defined in subdivision (e), and the number of dealers found to have violated this article with knowledge or gross negligence.

(h) Paragraph (14) or (15) of subdivision (b) shall not apply to a licensee organized as a nonprofit public benefit or mutual benefit corporation organized pursuant to Part 2 (commencing with Section 5110) or Part 3 (commencing with Section 7110) of Division 2 of the Corporations Code, if both of the following conditions are satisfied:

(1) The nonprofit public benefit or mutual benefit corporation obtained the dealer's license solely and exclusively to assist that corporation or local chapters of that corporation in conducting auctions or similar events at which firearms are auctioned off to fund the activities of that corporation or the local chapters of the corporation.

(2) The firearms are not pistols, revolvers, or other firearms capable of being concealed upon the person.

SEC. 2. Section 12071 of the Penal Code is amended to read:

12071. (a) (1) As used in this chapter, the term "licensee," "person licensed pursuant to Section 12071," or "dealer" means a person who has all of the following:

(A) A valid federal firearms license.

(B) Any regulatory or business license, or licenses, required by local government.

(C) A valid seller's permit issued by the State Board of Equalization.

(D) A certificate of eligibility issued by the Department of Justice pursuant to paragraph (4).

(E) A license issued in the format prescribed by paragraph (6).

(F) Is among those recorded in the centralized list specified in subdivision (e).

(2) The duly constituted licensing authority of a city, county, or a city and county shall accept applications for, and may grant licenses permitting, licensees to sell firearms at retail within the city, county, or city and county. The duly constituted licensing authority shall inform applicants who are denied licenses of the reasons for the denial in writing.

(3) No license shall be granted to any applicant who fails to provide a copy of his or her valid federal firearms license, valid seller's permit issued by the State Board of Equalization, and the certificate of eligibility described in paragraph (4).

(4) A person may request a certificate of eligibility from the Department of Justice and the Department of Justice shall issue a certificate to an applicant if the department's records indicate that the applicant is not a person who is prohibited from possessing firearms.

(5) The department shall adopt regulations to administer the certificate of eligibility program and shall recover the full costs of administering the program by imposing fees assessed to applicants who apply for those certificates.

(6) A license granted by the duly constituted licensing authority of any city, county, or city and county, shall be valid for not more than one year from the date of issuance and shall be in one of the following forms:

(A) In the form prescribed by the Attorney General.

(B) A regulatory or business license that states on its face "Valid for Retail Sales of Firearms" and is endorsed by the signature of the issuing authority.

(C) A letter from the duly constituted licensing authority having primary jurisdiction for the applicant's intended business location stating that the jurisdiction does not require any form of regulatory or business license or does not otherwise restrict or regulate the sale of firearms.

(7) Local licensing authorities may assess fees to recover their full costs of processing applications for licenses.

(b) A license is subject to forfeiture for a breach of any of the following prohibitions and requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the business shall be conducted only in the buildings designated in the license.

(B) A person licensed pursuant to subdivision (a) may take possession of firearms and commence preparation of registers for the sale, delivery, or transfer of firearms at gun shows or events, as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, if the gun show or event is not conducted from any motorized or towed vehicle. A person conducting business pursuant to this subparagraph shall be entitled to conduct business as authorized herein at any gun show or event in the state without regard to the jurisdiction within this state that issued the license pursuant to subdivision (a), provided the person complies with (i) all applicable laws, including, but not limited to, the waiting period specified in subparagraph (A) of paragraph (3), and (ii) all applicable local laws, regulations, and fees, if any.

A person conducting business pursuant to this subparagraph shall publicly display his or her license issued pursuant to subdivision (a), or a facsimile thereof, at any gun show or event, as specified in this subparagraph.

(C) A person licensed pursuant to subdivision (a) may engage in the sale and transfer of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, at events specified in subdivision (g) of Section 12078, subject to the prohibitions and restrictions contained in that subdivision.

A person licensed pursuant to subdivision (a) also may accept delivery of firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, outside the building designated in the license, provided the firearm is being donated for the purpose of sale or transfer at an auction or similar event specified in subdivision (g) of Section 12078.

(D) The firearm may be delivered to the purchaser, transferee, or person being loaned the firearm at one of the following places:

(i) The building designated in the license.

(ii) The places specified in subparagraph (B) or (C).

(iii) The place of residence of, the fixed place of business of, or on private property owned or lawfully possessed by, the purchaser, transferee, or person being loaned the firearm.

(2) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be seen.

(3) No firearm shall be delivered:

(A) Within 10 days of the application to purchase, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the

department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later.

(B) Unless unloaded and securely wrapped or unloaded and in a locked container.

(C) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of his or her identity and age to the dealer.

(D) Whenever the dealer is notified by the Department of Justice that the person is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(4) No pistol, revolver, or other firearm or imitation thereof capable of being concealed upon the person, or placard advertising the sale or other transfer thereof, shall be displayed in any part of the premises where it can readily be seen from the outside.

(5) The licensee shall agree to and shall act properly and promptly in processing firearms transactions pursuant to Section 12082.

(6) The licensee shall comply with Sections 12073, 12076, and 12077, subdivisions (a) and (b) of Section 12072, and subdivision (a) of Section 12316.

(7) The licensee shall post conspicuously within the licensed premises the following warnings in block letters not less than one inch in height:

(A) "IF YOU LEAVE A LOADED FIREARM WHERE A CHILD OBTAINS AND IMPROPERLY USES IT, YOU MAY BE FINED OR SENT TO PRISON."

(B) "IF YOU KEEP A LOADED FIREARM, OR A PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON, WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 16 GAINS ACCESS TO THE FIREARM, YOU MAY BE GUILTY OF A MISDEMEANOR OR A FELONY, UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE, TO KEEP IT FROM TEMPORARILY FUNCTIONING."

(C) "DISCHARGING FIREARMS IN POORLY VENTILATED AREAS, CLEANING FIREARMS, OR HANDLING AMMUNITION MAY RESULT IN EXPOSURE TO LEAD, A SUBSTANCE KNOWN TO CAUSE BIRTH DEFECTS, REPRODUCTIVE HARM, AND OTHER SERIOUS PHYSICAL INJURY. HAVE ADEQUATE VENTILATION AT ALL TIMES. WASH HANDS THOROUGHLY AFTER EXPOSURE."

(D) "FEDERAL REGULATIONS PROVIDE THAT IF YOU DO NOT TAKE PHYSICAL POSSESSION OF THE FIREARM THAT YOU ARE ACQUIRING OWNERSHIP OF WITHIN 30 DAYS AFTER YOU COMPLETE THE INITIAL BACKGROUND CHECK PAPERWORK, THEN YOU HAVE TO GO THROUGH THE

BACKGROUND CHECK PROCESS A SECOND TIME IN ORDER TO TAKE PHYSICAL POSSESSION OF THAT FIREARM."

(8) Commencing April 1, 1994, no pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered unless the purchaser, transferee, or person being loaned the firearm presents to the dealer a basic firearms safety certificate.

(9) Commencing July 1, 1992, the licensee shall offer to provide the purchaser or transferee of a firearm, or person being loaned a firearm, with a copy of the pamphlet described in Section 12080 and may add the cost of the pamphlet, if any, to the sales price of the firearm.

(10) The licensee shall not commit an act of collusion as defined in Section 12072.

(11) The licensee shall post conspicuously within the licensed premises a detailed list of each of the following:

(A) All charges required by governmental agencies for processing firearm transfers required by Sections 12076, 12082, and 12806.

(B) All fees that the licensee charges pursuant to Sections 12082 and 12806.

(12) The licensee shall not misstate the amount of fees charged by a governmental agency pursuant to Sections 12076, 12082, and 12806.

(13) The licensee shall report the loss or theft of any firearm that is merchandise of the licensee, any firearm that the licensee takes possession of pursuant to Section 12082, or any firearm kept at the licensee's place of business within 48 hours of discovery to the appropriate law enforcement agency in the city, county, or city and county where the licensee's business premises are located.

(14) In a city and county, or in the unincorporated area of a county with a population of 200,000 persons or more according to the most recent federal decennial census or within a city with a population of 50,000 persons or more according to the most recent federal decennial census, any time the licensee is not open for business, the licensee shall store all firearms kept in his or her licensed place of business using one of the following methods as to each particular firearm:

(A) Store the firearm in a secure facility that is a part of, or that constitutes, the licensee's business premises.

(B) Secure the firearm with a hardened steel rod or cable of at least one-eighth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a bolt cutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises.

(C) Store the firearm in a locked fireproof safe or vault in the licensee's business premises.

(15) The licensing authority in an unincorporated area of a county with a population less than 200,000 persons according to the most

recent federal decennial census or within a city with a population of less than 50,000 persons according to the most recent federal decennial census may impose the requirements specified in paragraph (14).

(16) Commencing January 1, 1994, the licensee shall, upon the issuance or renewal of a license, submit a copy of the same to the Department of Justice.

(17) The licensee shall maintain and make available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, a firearms transaction record.

(18) (A) On the date of receipt, the licensee shall report to the Department of Justice in a format prescribed by the department the acquisition by the licensee of the ownership of a pistol, revolver, or other firearm capable of being concealed upon the person.

(B) The provisions of this paragraph shall not apply to any of the following transactions:

(i) A transaction subject to the provisions of subdivision (n) of Section 12078.

(ii) The dealer acquired the firearm from a wholesaler.

(iii) The dealer is also licensed as a secondhand dealer pursuant to Article 4 (commencing with Section 21625) of Chapter 9 of Division 8 of the Business and Professions Code.

(iv) The dealer acquired the firearm from a person who is licensed as a manufacturer or importer to engage in those activities pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(v) The dealer acquired the firearm from a person who resides outside this state who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(19) The licensee shall forward in a format prescribed by the Department of Justice, information as required by the department on any firearm that is not delivered within the time period set forth in Section 178.102 (c) of Title 27 of the Code of Federal Regulations.

(c) (1) As used in this article, "clear evidence of his or her identity and age" means either of the following:

(A) A valid California driver's license.

(B) A valid California identification card issued by the Department of Motor Vehicles.

(2) As used in this article, a "basic firearms safety certificate" means a basic firearms certificate issued to the purchaser, transferee, or person being loaned the firearm by the Department of Justice pursuant to Article 8 (commencing with Section 12800) of Chapter 6.

(3) As used in this section, a "secure facility" means a building that meets all of the following specifications:

(A) All perimeter doorways shall meet one of the following:

(i) A windowless steel security door equipped with both a dead bolt and a doorknob lock.

(ii) A windowed metal door that is equipped with both a dead bolt and a doorknob lock. If the window has an opening of five inches or more measured in any direction, the window shall be covered with steel bars of at least one-half inch diameter or metal grating of at least nine gauge affixed to the exterior or interior of the door.

(iii) A metal grate that is padlocked and affixed to the licensee's premises independent of the door and doorframe.

(B) All windows are covered with steel bars.

(C) Heating, ventilating, air-conditioning, and service openings are secured with steel bars, metal grating, or an alarm system.

(D) Any metal grates have spaces no larger than six inches wide measured in any direction.

(E) Any metal screens have spaces no larger than three inches wide measured in any direction.

(F) All steel bars shall be no further than six inches apart.

(4) As used in this section, "licensed premises," "licensed place of business," "licensee's place of business," or "licensee's business premises" means the building designated in the license.

(5) For purposes of paragraph (17) of subdivision (b):

(A) A "firearms transaction record" is a record containing the same information referred to in subdivision (a) of Section 178.124, Section 178.124a, and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations.

(B) A licensee shall be in compliance with the provisions of paragraph (17) of subdivision (b) if he or she maintains and makes available for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, the bound book containing the same information referred to in Section 178.124a and subdivision (e) of Section 178.125 of Title 27 of the Code of Federal Regulations and the records referred to in subdivision (a) of Section 178.124 of Title 27 of the Code of Federal Regulations.

(d) Upon written request from a licensee, the licensing authority may grant an exemption from compliance with the requirements of paragraph (14) of subdivision (b) if the licensee is unable to comply with those requirements because of local ordinances, covenants, lease conditions, or similar circumstances not under the control of the licensee.

(e) Except as otherwise provided in this subdivision, the Department of Justice shall keep a centralized list of all persons licensed pursuant to subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (a). The department may remove from this list any person who knowingly or with gross negligence violates this article. Upon removal of a dealer from this list, notification shall

be provided to local law enforcement and licensing authorities in the jurisdiction where the dealer's business is located. The department shall make information about an individual dealer available, upon request, for one of the following purposes only:

(1) For law enforcement purposes.

(2) When the information is requested by a person licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code for determining the validity of the license for firearm shipments.

(3) When information is requested by a person promoting, sponsoring, operating, or otherwise organizing a show or event as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, who possesses a valid certificate of eligibility issued pursuant to Section 12071.1, if that information is requested by the person to determine the eligibility of a prospective participant in a gun show or event to conduct transactions as a firearms dealer pursuant to subparagraph (B) of paragraph (1) of subdivision (b). Information provided pursuant to this paragraph shall be limited to information necessary to corroborate an individual's current license status.

(f) The Department of Justice may inspect dealers to ensure compliance with this article. The department may assess an annual fee, not to exceed eighty-five dollars ($85), to cover the reasonable cost of maintaining the list described in subdivision (e), including the cost of inspections. Dealers whose place of business is in a jurisdiction that has adopted an inspection program to ensure compliance with firearms law shall be exempt from that portion of the department's fee that relates to the cost of inspections. The applicant is responsible for providing evidence to the department that the jurisdiction in which the business is located has the inspection program.

(g) The Department of Justice shall maintain and make available upon request information concerning the number of inspections conducted and the amount of fees collected pursuant to subdivision (f), a listing of exempted jurisdictions, as defined in subdivision (f), the number of dealers removed from the centralized list defined in subdivision (e), and the number of dealers found to have violated this article with knowledge or gross negligence.

(h) Paragraph (14) or (15) of subdivision (b) shall not apply to a licensee organized as a nonprofit public benefit or mutual benefit corporation organized pursuant to Part 2 (commencing with Section 5110) or Part 3 (commencing with Section 7110) of Division 2 of the Corporations Code, if both of the following conditions are satisfied:

(1) The nonprofit public benefit or mutual benefit corporation obtained the dealer's license solely and exclusively to assist that corporation or local chapters of that corporation in conducting auctions or similar events at which firearms are auctioned off to fund the activities of that corporation or the local chapters of the corporation.

(2) The firearms are not pistols, revolvers, or other firearms capable of being concealed upon the person.

SEC. 3. Section 2 of this bill incorporates amendments to Section 12071 of the Penal Code proposed by both this bill and SB 63. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 12071 of the Penal Code, and (3) this bill is enacted after SB 63, in which case Section 1 of this bill shall not become operative.

CHAPTER 269

An act to amend Sections 1764.1 and 1765.1 of, and to add Section 47 to, the Insurance Code, relating to surplus line insurance brokers.

[Approved by Governor August 10, 1998. Filed with Secretary of State August 10, 1998.]

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

SECTION 1. Section 47 is added to the Insurance Code, to read:

47. "Surplus line broker" means a person licensed under Section 1765 and authorized to do business under Chapter 6 (commencing with Section 1760) of Part 2 of Division 1.

SEC. 2. Section 1764.1 of the Insurance Code is amended to read:

1764.1. (a) (1) Every nonadmitted insurer, in the case of insurance to be purchased by a resident of this state pursuant to Section 1760, and surplus line broker, in the case of any insurance with a nonadmitted carrier to be transacted by the surplus line broker, shall be responsible to ensure that, at the time of accepting an application for any insurance policy, other than a renewal of that policy, issued by a nonadmitted insurer, the signature of the applicant on the disclosure statement set forth in subdivision (b) is obtained. In fulfillment of this responsibility, the nonadmitted insurer and the surplus line broker may rely, if it is reasonable under all the circumstances to do so, on the disclosure statement received from any licensee involved in the transaction as prima facie evidence that the disclosure statement and appropriate signature from the applicant have been obtained. The surplus line broker shall maintain a copy of the signed disclosure statement in his or her records for a period of at least five years. These records shall be made available to the commissioner and the insured upon request. This disclosure shall be signed by the applicant, and is not subject to any limited power of attorney agreement between the applicant and an agent or broker, or a surplus line broker. The disclosure statement shall be in boldface 16-point type on a freestanding document. In addition, every policy issued by a nonadmitted insurer and every certificate evidencing the placement of insurance shall contain, or have affixed to it by the

insurer or surplus line broker, the disclosure statement set forth in subdivision (b) in boldface 16-point type on the front page of the policy.

(2) In any case where the applicant has not received and completed the signed disclosure form required by this section, he or she may cancel the insurance so placed. The cancellation shall be on a pro rata basis as to premium, and the applicant shall be entitled to the return of any broker's fees charged for the placement.

(b) The following notice shall be provided to policyholders and applicants for insurance as provided by subdivision (a), and shall be printed in English and in the language principally used by the surplus line broker and nonadmitted insurer to advertise, solicit, or negotiate the sale and purchase of surplus line insurance. The surplus line broker and nonadmitted insurer shall use the appropriate bracketed language for application and issued policy disclosures:

"NOTICE:

1. THE INSURANCE POLICY THAT YOU [HAVE PURCHASED] [ARE APPLYING TO PURCHASE] IS BEING ISSUED BY AN INSURER THAT IS NOT LICENSED BY THE STATE OF CALIFORNIA. THESE COMPANIES ARE CALLED "NONADMITTED" OR "SURPLUS LINE" INSURERS.

2. THE INSURER IS NOT SUBJECT TO THE FINANCIAL SOLVENCY REGULATION AND ENFORCEMENT WHICH APPLIES TO CALIFORNIA LICENSED INSURERS.

3. THE INSURER DOES NOT PARTICIPATE IN ANY OF THE INSURANCE GUARANTEE FUNDS CREATED BY CALIFORNIA LAW. THEREFORE, THESE FUNDS WILL NOT PAY YOUR CLAIMS OR PROTECT YOUR ASSETS IF THE INSURER BECOMES INSOLVENT AND IS UNABLE TO MAKE PAYMENTS AS PROMISED.

4. CALIFORNIA MAINTAINS A LIST OF ELIGIBLE SURPLUS LINE INSURERS APPROVED BY THE INSURANCE COMMISSIONER. ASK YOUR AGENT OR BROKER IF THE INSURER IS ON THAT LIST.

5. FOR ADDITIONAL INFORMATION ABOUT THE INSURER YOU SHOULD ASK QUESTIONS OF YOUR INSURANCE AGENT, BROKER, OR "SURPLUS LINE" BROKER OR CONTACT THE CALIFORNIA DEPARTMENT OF INSURANCE, AT THE FOLLOWING TOLL-FREE TELEPHONE NUMBER: _____."

(c) When a contract is issued to an industrial insured neither the nonadmitted insurer nor the surplus line broker is required to provide the notice required in this section except on the confirmation of insurance, the certificate of placement, or the policy, whichever is first provided to the insured, nor is the insurer or surplus line broker required to obtain the insured's signature. The producer shall ensure

that the notice affixed to the confirmation of insurance, certificate of placement, or the policy is provided to the insured. The producer shall insert the current toll-free telephone number of the Department of Insurance as provided in paragraph 4 of the notice.

(1) An industrial insured is an insured:

(A) Which employs at least 25 employees on average during the prior 12 months; and

(B) Which has aggregate annual premiums for insurance for all risks other than workers' compensation and health coverage totaling no less than twenty-five thousand dollars ($25,000); or

(C) Which obtains insurance through the services of a full-time employee acting as an insurance manager or a continuously retained insurance consultant. A "continuously retained insurance consultant" does not include: (i) Any agent or broker through whom the insurance is being placed, (ii) any subagent or subproducer involved in the transaction, or (iii) any agent or broker which is a business organization employing or contracting with any person mentioned in clauses (i) and (ii).

(2) The surplus line broker shall be responsible to ensure that the applicant is an industrial insured. A surplus line broker who reasonably relies on information provided in good faith by the applicant, whether directly or through the producer, shall be deemed to be in compliance with this requirement.

(d) For purposes of compliance with the requirement of subdivision (a) that the signature of the applicant be obtained, the following shall apply:

(1) Where the insurance transaction is not conducted at an in-person, face-to-face meeting, the applicant's signature on the disclosure form may be transmitted by the applicant to the agent or broker via facsimile or comparable electronic transmittal.

(2) In the case of commercial insurance coverages, where an applicant requires that insurance coverage be bound immediately, either because existing coverage will lapse within two business days of the time the insurance is bound or because the applicant is required to have coverage in place within two business days, and the applicant cannot meet in person with the agent or broker to sign the disclosure form, the agent or broker may obtain the signature of the applicant within five days of binding coverage, provided that the applicant may cancel the insurance so placed within five days of receiving the disclosure form from the agent or broker. The cancellation shall be on a pro rata basis, and the applicant shall be entitled to the rescission or return of any broker's fees charged for the placement.

(e) Notwithstanding subdivision (a), this section shall not apply to insurance issued or delivered in this state by a nonadmitted Mexican insurer by and through a surplus line broker affording coverage exclusively in the Republic of Mexico on property located

temporarily or permanently in, or operations conducted temporarily or permanently within, the Republic of Mexico.

SEC. 3. Section 1765.1 of the Insurance Code is amended to read:

1765.1. No surplus line broker shall place any coverage with a nonadmitted insurer unless the insurer is domiciled in the Republic of Mexico and the placement covers only liability arising out of the ownership, maintenance, or use of a motor vehicle, aircraft, or boat in the Republic of Mexico, or, at the time of placement, the nonadmitted insurer:

(a) (1) Has established its financial stability, reputation, and integrity, for the class of insurance the broker proposes to place, by satisfactory evidence submitted to the commissioner through a surplus line broker.

(2) (A) Has capital and surplus that together total at least fifteen million dollars ($15,000,000). "Capital" shall be as defined in Section 36. "Surplus" shall be defined as assets exceeding the sum of liabilities for losses reported, expenses, taxes, and all other indebtedness and reinsurance of outstanding risks as provided by law and paid-in capital in the case of an insurer issuing or having outstanding shares of capital stock. The type of assets to be used in calculating capital and surplus shall be as follows: at least fifteen million dollars ($15,000,000) shall be in the form of cash, or securities of the same character and quality as specified in Sections 1170 to 1182, inclusive, or in readily marketable securities listed on regulated United States' national or principal regional securities exchanges. The remaining assets shall be in the form just described, or in the form of investments of substantially the same character and quality as described in Sections 1190 to 1202, inclusive. In calculating capital and surplus under this section, the term "same character and quality" shall permit, but not require, the commissioner to approve assets maintained in accordance with the laws of another state or country. The commissioner shall be guided by any limitations, restrictions, or other requirements of this code or the National Association of Insurance Commissioners' Accounting Practices and Procedures Manual in determining whether assets substantially similar to those described in Sections 1190 to 1202, inclusive, qualify. The commissioner shall retain the discretion to disapprove or disallow any asset that is not of a sound quality, or that he or she deems to create an unacceptable risk of loss to the insurer or to policyholders. Securities specifically valued by the National Association of Insurance Commissioners Securities Valuation Office shall be presumed readily marketable absent evidence to the contrary. Letters of credit will not qualify as assets in the calculation of surplus. If less than fifteen million dollars ($15,000,000), the commissioner has affirmatively found that the capital and surplus is adequate to protect California policyholders. The commissioner shall consider, on determining whether to make this finding, factors such as quality of management, the capital and surplus of any parent company, the underwriting profit and

investment income trends, and the record of claims payment and claims handling practices of the nonadmitted insurer, or

(B) In the case of an "Insurance Exchange" created and authorized under the laws of individual states, maintains capital and surplus of not less than fifty million dollars ($50,000,000) in the aggregate. "Capital" shall be as defined in Section 36. "Surplus" shall be defined as assets exceeding the sum of liabilities for losses reported, expenses, taxes, and all other indebtedness and reinsurance of outstanding risks as provided by law and paid-in capital in the case of an insurer issuing or having outstanding shares of capital stock. The type of assets to be used in calculating capital and surplus shall be as follows: at least fifteen million dollars ($15,000,000) shall be in the form of cash, or securities of the same character and quality as specified in Sections 1170 to 1182, inclusive, or in readily marketable securities listed on regulated United States' national or principal regional securities exchanges. The remaining assets shall be in the form just described, or in the form of investments of substantially the same character and quality as described in Sections 1190 to 1202, inclusive. In calculating capital and surplus under this section, the term "same character and quality" shall permit, but not require, the commissioner to approve assets maintained in accordance with the laws of another state or country. The commissioner shall be guided by any limitations, restrictions, or other requirements of this code or the National Association of Insurance Commissioners' Accounting Practices and Procedures Manual in determining whether assets substantially similar to those described in Sections 1190 to 1202, inclusive, qualify. The commissioner shall retain the discretion to disapprove or disallow any asset that is not of a sound quality, or that he or she deems to create an unacceptable risk of loss to the insurer or to policyholders. Securities specifically valued by the National Association of Insurance Commissioners Securities Valuation Office shall be presumed readily marketable absent evidence to the contrary. Letters of credit will not qualify as assets in the calculation of surplus. In the case of an Insurance Exchange which maintains funds for the protection of all Insurance Exchange policyholders, each individual syndicate seeking to accept surplus line placements of risks resident, located or to be performed in this state shall maintain minimum capital and surplus of not less than six million four hundred thousand dollars ($6,400,000). Each individual syndicate shall increase the capital and surplus required by this paragraph by one million dollars ($1,000,000) each year until it attains a capital and surplus of fifteen million dollars ($15,000,000). In the case of Insurance Exchanges which do not maintain funds for the protection of all Insurance Exchange policyholders, each individual syndicate seeking to accept surplus line placement of risks resident, located or to be performed in this state shall meet the capital and surplus requirements of subparagraph (A) of this paragraph.

(C) In the case of a syndicate that is part of a group consisting of incorporated individual insurers, or a combination of both incorporated and unincorporated insurers, that at all times maintains a trust fund of not less than one hundred million dollars ($100,000,000) in a qualified United States financial institution as security to the full amount thereof for the United States surplus line policyholders and beneficiaries of direct policies of the group, including all policyholders and beneficiaries of direct policies of the syndicate, and the full balance in the trust fund is available to satisfy the liabilities of each member of the group of those syndicates, incorporated individual insurers or other unincorporated insurers, without regard to their individual contributions to that trust fund, and the trust complies with the terms of and conditions specified in paragraph (1) of subdivision (b), the syndicate is excepted from the capital and surplus requirements of subparagraph (A) of paragraph (2). The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members.

(b) (1) In addition, to be eligible as a surplus line insurer, an insurer not domiciled in one of the United States or its territories shall have in force in the United States an irrevocable trust account in a qualified United States financial institution, for the protection of United States policyholders, of not less than five million four hundred thousand dollars ($5,400,000) and consisting of cash, securities acceptable to the commissioner which are authorized pursuant to Sections 1170 to 1182, inclusive, readily marketable securities acceptable to the commissioner which are listed on a regulated United States national or principal regional security exchange, or clean and irrevocable letters of credit acceptable to the commissioner and issued by a qualified United States financial institution. The trust agreement shall be in a form acceptable to the commissioner. The funds in the trust account may be included in any calculation of capital and surplus, except letters of credit, which shall not be included in any calculation.

(2) In the case of a syndicate seeking eligibility under subparagraph (C) of paragraph (2) of subdivision (a), the syndicate shall, in addition to the requirements of that subparagraph, at a minimum, maintain in the United States a trust account in an amount satisfactory to the commissioner that is not less than the amount required by the domiciliary state of the syndicate's trust. The trust account shall comply with the terms and conditions specified in paragraph (1) of subdivision (b).

(3) In the case of a group of incorporated insurers under common administration that maintains a trust fund of not less than one hundred million dollars ($100,000,000) in a qualified United States financial institution for the payment of claims of its United States

policyholders, their assigns, or successors in interest and that complies with the terms and conditions of paragraph (1) that has continuously transacted an insurance business outside the United States for at least three years, 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 bears the expense of examination, and that has an aggregate policyholder surplus of ten billion dollars ($10,000,000,000), the group is excepted from the capital and surplus requirements of subdivision (a).

(c) Has caused to be provided to the commissioner the following documents:

(1) The financial documents as specified below, each showing the insurer's condition as of a date not more than 12 months prior to submission:

(A) A copy of an annual statement, prepared in the form prescribed by the NAIC. For an alien insurer, in lieu of an annual statement, a licensee may submit a form as set forth by regulation and as prepared by the insurer, and, if listed by the IID, a copy of the complete information as required in the application for listing by the IID.

(B) A copy of an audited financial report on the insurer's condition that meets the standards of paragraph (D) for foreign insurers or paragraph (E) for alien insurers.

(C) If the insurer is an alien:

(i) A certified copy of the trust agreement referenced in subdivision (b).

(ii) A verified copy of the most recent quarterly statement or list of the assets in the trust.

(D) Financial reports filed pursuant to this section by foreign insurers shall conform to the following standards:

(i) Financial documents shall be certified.

(ii) An audited financial report shall constitute a supplement to the insurer's annual statement, as required by the annual statement instructions issued by the NAIC.

(iii) An audited financial report shall be prepared by an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states where licensed to practice; and be prepared in conformity with statutory accounting practices prescribed, or otherwise permitted, by the insurance regulator of the insurer's domiciliary jurisdiction.

(iv) An audited financial report shall include information on the insurer's financial position as of the end of the most recent calendar year, and the results of its operations, cash-flows, and changes in capital and surplus for the year then ended.

(v) An audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the insurer's annual statement filed with its domiciliary jurisdiction, and presenting comparatively the amounts as of December 31 of the most recent calendar year and the amounts as of December 31 of the preceding year.

(E) Financial reports filed pursuant to this section by alien insurers shall conform to the following standards:

(i) Except as provided in clause (ii) of subparagraph (C), financial documents should be certified, if certification of a financial document is not available, the document shall be verified.

(ii) Financial documents should be expressed in United States dollars, but may be expressed in another currency, if the exchange rate for the other currency as of the date of the document is also provided.

(iii) The responses provided pursuant to subparagraph (A) of paragraph (1) on the form submitted in lieu of an annual statement should follow the most recent ISI Guide to Alien Reporting Format, "Standard Definitions of Accounting Items." Responses that do not agree with a standard definition shall be fully explained in the form.

(iv) An audited financial report shall be prepared by an independent licensed auditor in the insurer's domiciliary jurisdiction or in any state.

(v) An audited financial report shall be prepared in accord with either (I) Generally Accepted Auditing Standards that prescribe Generally Accepted Accounting Principles, or (II) International Accounting Standards as published and revised from time to time by the International Auditing Guidelines published by the International Auditing Practice Committee of the International Federation of Accountants; and shall include financial statement notes and a summary of significant accounting practices.

(F) The commissioner may accept, in lieu of a document described above, any certified or verified financial or regulatory document, statement, or report if the commissioner finds that it possesses reliability and financial detail substantially equal to or greater than the document for which it is proposed to be a substitute.

(G) If one of the financial documents required to be submitted under subparagraphs (A) and (B) is dated within 12 months of submission, but the other document is not so dated, the licensee may use the outdated document if it is accompanied by a supplement. The supplement must meet the same requirements which apply to the supplemented document, and must update the outdated document to a date within the prescribed time period, preferably to the same date as the nonsupplemented document.

(2) A certified copy of the insurer's license issued by its domiciliary jurisdiction, plus a certification of good standing, certificate of compliance, or other equivalent certificate, from either

that jurisdiction or, if the jurisdiction issues no certificates, from any state where it is licensed.

(3) Information on the insurer's agent in California for service of process, including the agent's full name and address. The agent's address must include a street address where the agent can be reached during normal business hours.

(4) The complete street address, mailing address, and telephone number of the insurer's principal place of business.

(5) A certified or verified explanation, report, or other statement, from the insurance regulatory office or official of the insurer's domiciliary jurisdiction, concerning the insurer's record regarding market conduct and consumer complaints; or, if that information cannot be obtained from that jurisdiction, then any other information that the licensee can procure to demonstrate a good reputation for payment of claims and treatment of policyholders.

(6) A verified statement, from the insurer or licensee, on whether the insurer or any affiliated entity is currently known to be the subject of any order or proceeding regarding conservation, liquidation, or other receivership; or regarding revocation or suspension of a license to transact insurance in any jurisdiction; or otherwise seeking to stop the insurer from transacting insurance in any jurisdiction. The statement shall identify the proceeding by date, jurisdiction, and relief or sanction sought; and shall attach a copy of the relevant order.

(7) A certified copy of the most recent report of examination or an explanation if the report is not available.

(d) (1) Has provided any additional information or documentation required by the commissioner which is relevant to the financial stability, reputation, and integrity of the nonadmitted insurer. In making a determination concerning financial stability, reputation, and integrity of the nonadmitted insurer, the commissioner shall consider any analysis, findings, or conclusion made by the National Association of Insurance Commissioners (NAIC) in its review of the insurer for purposes of inclusion on or exclusion from the list of authorized nonadmitted insurers maintained by the NAIC. The commissioner may, but shall not be required to, rely on, adopt, or otherwise accept any analyses, findings, or conclusions of the NAIC, as the commissioner deems appropriate. In the case of a syndicate seeking eligibility under subparagraph (C) of paragraph (2) of subdivision (a), the commissioner may, but shall not be required to, rely on, adopt, or otherwise accept any analyses, findings, or conclusions of any state, as the commissioner deems appropriate, as long as that state, in its method of regulation and review, meets the requirements of paragraph (2).

(2) The regulatory body of the state shall regularly receive and review the following: (A) an audited financial statement of the syndicate, prepared by a certified or chartered public accountant; (B) an opinion of a qualified actuary with regard to the syndicate's

aggregate reserves for payment of losses or claims and payment of expenses of adjustment or settlement of losses or claims; (C) a certification from the qualified United States financial institution that acts as the syndicate's trustee, respecting the existence and value of the syndicate's trust fund; and (D) information concerning the syndicate's or its manager's operating history, business plan, ownership and control, experience and ability, together with any other pertinent factors, and any information indicating that the syndicate or its manager make reasonably prompt payment of claims in this state or elsewhere. The regulatory body of the state shall have the authority, either by law or through the operation of a valid and enforceable agreement, to review the syndicate's assets and liabilities and audit the syndicate's trust account, and shall exercise that authority with a frequency and in a manner satisfactory to the commissioner.

(e) Has established that:

(1) All documents required by subdivisions (c) and (d) have been filed. Each of the documents appear after review to be complete, clear, comprehensible, unambiguous, accurate, and consistent.

(2) The documents affirm that the insurer is not subject in any jurisdiction to an order or proceeding that:

(A) Seeks to stop it from transacting insurance.

(B) Relates to conservation, liquidation, or other receivership.

(C) Relates to revocation or suspension of its license.

(3) The documents affirm that the insurer has actively transacted insurance for the three years immediately preceding the filing made under this section, unless an exemption is granted. As used in this paragraph, "insurer" does not include a syndicate of underwriting entities. The commissioner may grant an exemption if the licensee has applied for exemption and demonstrates either of the following:

(A) The insurer meets the condition for any exception set forth in subdivision (a), (b), or (c) of Section 716.

(B) If the insurer has been actively transacting insurance for at least 12 months, and the licensee demonstrates that the exemption is warranted because the insurer's current financial strength, operating history, business plan, ownership and control, management experience, and ability, together with any other pertinent factors, make three years of active insurance transaction unnecessary to establish sufficient reputation.

(4) The documents confirm that the insurer holds a license to issue insurance policies (other than reinsurance) to residents of the jurisdiction that granted the license unless an exemption is granted. The commissioner may grant an exemption if the licensee has applied for an exemption and demonstrates that the exemption is warranted because the insurer proposes to issue in California only commercial coverage, and is wholly owned and actually controlled by substantial and knowledgeable business enterprises that are its

policyholders and that effectively govern the insurer's destiny in furtherance of their own business objectives.

(5) The information filed pursuant to paragraph (5) of subdivision (c) or otherwise filed with or available to the commissioner, including reports received from California policyholders, shall indicate that the insurer makes reasonably prompt payment of claims in this state or elsewhere.

(6) The information available to the commissioner shall not indicate that the insurer offers in California a licensee products or rates that violate any provision of this code.

(f) Has been placed on the list of eligible surplus line insurers by the commissioner. The commissioner shall establish a list of all surplus line insurers that have met the requirements of subdivisions (a) to (e), inclusive, and shall publish a master list at least semiannually. Any insurer receiving approval as an eligible surplus line insurer shall be added by addendum to the list at the time of approval, and shall be incorporated into the master list at the next date of publication. If an insurer appears on the most recent list, it shall be presumed that the insurer is an eligible surplus line insurer, unless the commissioner or his or her designee has mailed or causes to be mailed notice to all surplus line brokers and special lines' surplus line brokers that the commissioner has withdrawn the insurer's eligibility. Upon receipt of notice, the surplus line broker or special lines' surplus line broker shall make no further placements with the insurer. Nothing in this subdivision shall limit the commissioner's discretion to withdraw an insurer's eligibility.

(g) (1) Except as provided by paragraph (2), whenever the commissioner has reasonable cause to believe, and determines after a public hearing, that any insurer on the list established pursuant to subdivision (f), (A) is in an unsound financial condition, (B) does not meet the eligibility requirements under subdivisions (a) to (e), inclusive, (C) has violated the laws of this state, or (D) without justification, or with a frequency so as to indicate a general business practice, delays the payment of just claims, the commissioner may issue an order removing the insurer from the list. Notice of hearing shall be served upon the insurer or its agent for service of process stating the time and place of the hearing and the conduct, condition, or ground upon which the commissioner would make his or her order. The hearing shall occur not less than 20 days, nor more than 30 days after notice is served upon the insurer or its agent for service of process.

(2) If the commissioner determines that an insurer's immediate removal from the list is necessary to protect the public or an insured or prospective insured of the insurer, or, in the case of an application by an insurer to be placed on the list which is being denied by the commissioner, the commissioner may issue an order pursuant to paragraph (1) without prior notice and hearing. At the time an order is served pursuant to this paragraph to an insurer on the list, the

commissioner shall also issue and serve upon the insurer a statement of the reasons that immediate removal is necessary. Any order issued pursuant to this paragraph shall include a notice stating the time and place of a hearing on the order, which shall be not less than 20 days, nor more than 30 days after the notice is served.

(3) Notwithstanding paragraphs (1) and (2), in any case where the commissioner is basing a decision to remove an insurer from the list, or deny an application to be placed on the list, on the failure of the insurer or applicant to comply with, meet or maintain any of the objective criteria established by this section, or by regulation adopted pursuant to this section, the commissioner may so specify this fact in the order, and no hearing shall be required to be held on the order.

(4) Notwithstanding paragraphs (1) and (2), the commissioner may, without prior notice or hearing, remove from the list established pursuant to subdivision (f) any insurer which has failed or refused to timely provide documents required by this section, or any regulations adopted to implement this section. In the case of removal pursuant to this paragraph, the commissioner shall notify all surplus line brokers and special lines' surplus line brokers of the action.

(h) In addition to any other statements or reports required by this chapter, the commissioner may also address to any licensee a written request for full and complete information respecting the financial stability, reputation and integrity of any nonadmitted insurer with whom the licensee has dealt or proposes to deal in the transaction of insurance business. The licensee so addressed shall promptly furnish in written or printed form so much of the information requested as he or she can produce together with a signed statement identifying the same and giving reasons for omissions, if any. After due examination of the information and accompanying statement, the commissioner may, if he or she believes it to be in the public interest, order the licensee in writing to place no further insurance business on property located or operations conducted within or on the lives of persons who are residents of this state with the nonadmitted insurer on behalf of any person. Any placement in the nonadmitted insurer made by a licensee after receipt of that order is a violation of this chapter. The commissioner may issue an order when documents submitted pursuant to subdivisions (c) and (d) do not meet the criteria of subdivisions (a) to (e), inclusive, or when the commissioner obtains documents on an insurer and the insurer does not meet the criteria of subdivisions (a) to (e), inclusive.

(i) The commissioner shall require, at least annually, the submission of records and statements as are reasonably necessary to ensure that the requirements of this section are maintained.

(j) The commissioner shall establish by regulation a schedule of fees to cover costs of administering and enforcing this chapter.

(k) (1) Insurance may be placed on a limited basis with insurers not on the list established pursuant to this section if all of the following conditions are met:

(A) The use of multiple insurers is necessary to obtain coverage for 100 percent of the risk.

(B) At least 80 percent of the risk is placed with admitted insurers or insurers that appear on the list of eligible nonadmitted insurers.

(C) The placing surplus line broker submits to the commissioner, or his or her designee, copies of all documentation relied upon by the surplus line broker to make the broker's determination that the financial stability, reputation, and integrity of the unlisted insurer or insurers, are adequate to safeguard the interest of the insured under the policy. This documentation, and any other documentation regarding the unlisted insurer requested by the commissioner, shall be submitted no more than 30 days after the insurance is placed with the unlisted insurer for the initial placement by that broker with the particular unlisted insurer, and annually thereafter for as long as the broker continues to make placements with the unlisted insurer pursuant to this paragraph.

(D) The insured has aggregate annual premiums for all risks other than workers' compensation or health coverage totaling no less than one hundred thousand dollars ($100,000).

(2) Insurance may not be placed pursuant to paragraph (1) if any of the following applies:

(A) The unlisted insurer has for any reason been objected to by the commissioner pursuant to Section 1765.1, removed from the list, or denied placement on the list.

(B) The insurance includes coverage for employer-sponsored medical, surgical, hospital, or other health or medical expense benefits payable to the employee by the insurer.

(C) The insurance is mandatory under the laws of the federal government, this state, or any political subdivision thereof, and includes any portion of limits of coverage mandated by those laws.

(D) The insured is a multiple employer welfare arrangement, as defined in Section 1002(40)(A) of Title 29 of the United States Code, or any other arrangement among two or more employers that are not under common ownership or control, which is established or maintained for the primary purpose of providing insurance benefits to the employees of two or more employers.

(E) Unlisted insurers represent a disproportionate portion of the lower layers of the coverage.

(3) Nothing in this section is intended to alter any duties of a surplus line broker pursuant to subdivision (b) of Section 1765 or other laws of this state to safeguard the interests of the insured under the policy in recommending or placing insurance with a nonadmitted insurer.

(4) Placements authorized by this subdivision are intended to provide sophisticated insurance purchasers with a means to obtain necessary commercial insurance coverage from nonadmitted insurers not listed by the commissioner in situations where it is not commercially possible to fully obtain that coverage from either

admitted or listed insurers. This subdivision shall not be deemed to permit surplus line brokers to place with nonadmitted insurers common commercial or personal line coverages for insureds that can be placed with insurers that are admitted or listed pursuant to this section, whether the insured is an individual insured, or a group created primarily for the purpose of purchasing insurance.

(*l*) As used in this section:

(1) "Certified" means an originally signed or sealed statement, dated not more than 60 days before submission, made by a public official or other person, attached to a copy of a document, that attests that the copy is a true copy of the original, and that the original is in the custody of the person making the statement.

(2) "Domiciliary jurisdiction" means the state, nation, or subdivision thereof under the laws of which an insurer is incorporated or otherwise organized.

(3) "Domiciliary state of the syndicate's trust" means the state in which the syndicate's trust fund is principally maintained and administered for the benefit of the syndicate's policyholders in the United States.

(4) "IID" means the International Insurers Department.

(5) "Insurer" means (unless the context indicates otherwise) "nonadmitted" insurers that are either "foreign" or "alien" insurers, as those terms are defined in Sections 25, 27, and 1580, and syndicates whose members consist of individual incorporated insurers who are not engaged in any business other than underwriting as a member of the group and individual unincorporated insurers, provided all the members are subject to the same level of solvency regulation and control by the group's domiciliary regulator. The term "insurer" includes all nonadmitted insurers selling insurance to or through purchasing groups as defined in the Liability Risk Retention Act of 1986 (15 U.S.C. Sec. 3901 et seq.) and the California Risk Retention Act of 1990 (Chapter 1.5 (commencing with Section 125) of Part 1 of Division 1), except insurers that are risk retention groups as defined by those acts.

(6) "ISI" means Insurance Solvency International.

(7) "Licensee" means a surplus line broker as defined in Section 47.

(8) "NAIC" means the National Association of Insurance Commissioners or its successor organization.

(9) "NAIIO" means the Nonadmitted Alien Insurer Information Office of the NAIC or its successor office.

(10) "State" means any state of the United States; the District of Columbia; a commonwealth, or a territory.

(11) "Verified" means a document or copy accompanied by an originally signed statement, dated not more than 60 days before submission, from a responsible executive or official who has authority to provide the statement and knowledge whereof he or she speaks, attesting either under oath before a notary public, or under penalty

of perjury under California law, that the assertions made in the document are true.

(m) With respect to a nonadmitted insurer that is listed as an authorized surplus line insurer as of December 31, 1994, pursuant to Sections 2174.1 to 2174.14, inclusive, of Title 10 of the California Code of Regulations, this section shall not be effective until the subsequent expiration of the listing of that insurer. Nothing in the bill that amended this section during the 1994 portion of the 1993–94 Regular Session is intended to repeal or imply there is not authority to adopt, or to have adopted, or to continue in force, any regulation, or part thereof, with respect to surplus line insurance which is not clearly inconsistent with it.

SEC. 4. Section 1765.1 of the Insurance Code is amended to read:

1765.1. No surplus line broker shall place any coverage with a nonadmitted insurer unless the insurer is domiciled in the Republic of Mexico and the placement covers only liability arising out of the ownership, maintenance, or use of a motor vehicle, aircraft, or boat in the Republic of Mexico, or, at the time of placement, the nonadmitted insurer:

(a) (1) Has established its financial stability, reputation, and integrity, for the class of insurance the broker proposes to place, by satisfactory evidence submitted to the commissioner through a surplus line broker.

(2) (A) Has capital and surplus that together total at least fifteen million dollars ($15,000,000). "Capital" shall be as defined in Section 36. "Surplus" shall be defined as assets exceeding the sum of liabilities for losses reported, expenses, taxes, and all other indebtedness and reinsurance of outstanding risks as provided by law and paid-in capital in the case of an insurer issuing or having outstanding shares of capital stock. The type of assets to be used in calculating capital and surplus shall be as follows: at least fifteen million dollars ($15,000,000) shall be in the form of cash, or securities of the same character and quality as specified in Sections 1170 to 1182, inclusive, or in readily marketable securities listed on regulated United States' national or principal regional securities exchanges. The remaining assets shall be in the form just described, or in the form of investments of substantially the same character and quality as described in Sections 1190 to 1202, inclusive. In calculating capital and surplus under this section, the term "same character and quality" shall permit, but not require, the commissioner to approve assets maintained in accordance with the laws of another state or country. The commissioner shall be guided by any limitations, restrictions, or other requirements of this code or the National Association of Insurance Commissioners' Accounting Practices and Procedures Manual in determining whether assets substantially similar to those described in Sections 1190 to 1202, inclusive, qualify. The commissioner shall retain the discretion to disapprove or disallow any asset that is not of a sound quality, or that he or she deems to create an unacceptable risk

of loss to the insurer or to policyholders. Securities specifically valued by the National Association of Insurance Commissioners Securities Valuation Office shall be presumed readily marketable absent evidence to the contrary. Letters of credit will not qualify as assets in the calculation of surplus. If less than fifteen million dollars ($15,000,000), the commissioner has affirmatively found that the capital and surplus is adequate to protect California policyholders. The commissioner shall consider, on determining whether to make this finding, factors such as quality of management, the capital and surplus of any parent company, the underwriting profit and investment income trends, and the record of claims payment and claims handling practices of the nonadmitted insurer, or

(B) In the case of an "Insurance Exchange" created and authorized under the laws of individual states, maintains capital and surplus of not less than fifty million dollars ($50,000,000) in the aggregate. "Capital" shall be as defined in Section 36. "Surplus" shall be defined as assets exceeding the sum of liabilities for losses reported, expenses, taxes, and all other indebtedness and reinsurance of outstanding risks as provided by law and paid-in capital in the case of an insurer issuing or having outstanding shares of capital stock. The type of assets to be used in calculating capital and surplus shall be as follows: at least fifteen million dollars ($15,000,000) shall be in the form of cash, or securities of the same character and quality as specified in Sections 1170 to 1182, inclusive, or in readily marketable securities listed on regulated United States' national or principal regional securities exchanges. The remaining assets shall be in the form just described, or in the form of investments of substantially the same character and quality as described in Sections 1190 to 1202, inclusive. In calculating capital and surplus under this section, the term "same character and quality" shall permit, but not require, the commissioner to approve assets maintained in accordance with the laws of another state or country. The commissioner shall be guided by any limitations, restrictions, or other requirements of this code or the National Association of Insurance Commissioners' Accounting Practices and Procedures Manual in determining whether assets substantially similar to those described in Sections 1190 to 1202, inclusive, qualify. The commissioner shall retain the discretion to disapprove or disallow any asset that is not of a sound quality, or that he or she deems to create an unacceptable risk of loss to the insurer or to policyholders. Securities specifically valued by the National Association of Insurance Commissioners Securities Valuation Office shall be presumed readily marketable absent evidence to the contrary. Letters of credit will not qualify as assets in the calculation of surplus. In the case of an Insurance Exchange which maintains funds for the protection of all Insurance Exchange policyholders, each individual syndicate seeking to accept surplus line placements of risks resident, located or to be performed in this state shall maintain minimum capital and surplus of not less than six million four

hundred thousand dollars ($6,400,000). Each individual syndicate shall increase the capital and surplus required by this paragraph by one million dollars ($1,000,000) each year until it attains a capital and surplus of fifteen million dollars ($15,000,000). In the case of Insurance Exchanges that do not maintain funds for the protection of all Insurance Exchange policyholders, each individual syndicate seeking to accept surplus line placement of risks resident, located or to be performed in this state shall meet the capital and surplus requirements of subparagraph (A) of this paragraph.

(C) In the case of a syndicate that is part of a group consisting of incorporated individual insurers, or a combination of both incorporated and unincorporated insurers, that at all times maintains a trust fund of not less than one hundred million dollars ($100,000,000) in a qualified United States financial institution as security to the full amount thereof for the United States surplus line policyholders and beneficiaries of direct policies of the group, including all policyholders and beneficiaries of direct policies of the syndicate, and the full balance in the trust fund is available to satisfy the liabilities of each member of the group of those syndicates, incorporated individual insurers or other unincorporated insurers, without regard to their individual contributions to that trust fund, and the trust complies with the terms of and conditions specified in paragraph (1) of subdivision (b), the syndicate is excepted from the capital and surplus requirements of subparagraph (A) of paragraph (2). The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members.

(b) (1) In addition, to be eligible as a surplus line insurer, an insurer not domiciled in one of the United States or its territories shall have in force in the United States an irrevocable trust account in a qualified United States financial institution, for the protection of United States policyholders, of not less than five million four hundred thousand dollars ($5,400,000) and consisting of cash, securities acceptable to the commissioner that are authorized pursuant to Sections 1170 to 1182, inclusive, readily marketable securities acceptable to the commissioner which are listed on a regulated United States national or principal regional security exchange, or clean and irrevocable letters of credit acceptable to the commissioner and issued by a qualified United States financial institution. The trust agreement shall be in a form acceptable to the commissioner. The funds in the trust account may be included in any calculation of capital and surplus, except letters of credit, which shall not be included in any calculation.

(2) In the case of a syndicate seeking eligibility under subparagraph (C) of paragraph (2) of subdivision (a), the syndicate shall, in addition to the requirements of that subparagraph, at a

minimum, maintain in the United States a trust account in an amount satisfactory to the commissioner that is not less than the amount required by the domiciliary state of the syndicate's trust. The trust account shall comply with the terms and conditions specified in paragraph (1) of subdivision (b).

(3) In the case of a group of incorporated insurers under common administration that maintains a trust fund of not less than one hundred million dollars ($100,000,000) in a qualified United States financial institution for the payment of claims of its United States policyholders, their assigns, or successors in interest and that complies with the terms and conditions of paragraph (1) that has continuously transacted an insurance business outside the United States for at least three years, 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 bears the expense of examination, and that has an aggregate policyholder surplus of ten billion dollars ($10,000,000,000), the group is excepted from the capital and surplus requirements of subdivision (a).

(c) Has caused to be provided to the commissioner the following documents:

(1) The financial documents as specified below, each showing the insurer's condition as of a date not more than 12 months prior to submission:

(A) A copy of an annual statement, prepared in the form prescribed by the NAIC. For an alien insurer, in lieu of an annual statement, a licensee may submit a form as set forth by regulation and as prepared by the insurer, and, if listed by the IID, a copy of the complete information as required in the application for listing by the IID.

(B) A copy of an audited financial report on the insurer's condition that meets the standards of subparagraph (D) for foreign insurers or subparagraph (E) for alien insurers.

(C) If the insurer is an alien:

(i) A certified copy of the trust agreement referenced in subdivision (b).

(ii) A verified copy of the most recent quarterly statement or list of the assets in the trust.

(D) Financial reports filed pursuant to this section by foreign insurers shall conform to the following standards:

(i) Financial documents shall be certified.

(ii) An audited financial report shall constitute a supplement to the insurer's annual statement, as required by the annual statement instructions issued by the NAIC.

(iii) An audited financial report shall be prepared by an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants

and in all states where licensed to practice; and be prepared in conformity with statutory accounting practices prescribed, or otherwise permitted, by the insurance regulator of the insurer's domiciliary jurisdiction.

(iv) An audited financial report shall include information on the insurer's financial position as of the end of the most recent calendar year, and the results of its operations, cash-flows, and changes in capital and surplus for the year then ended.

(v) An audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the insurer's annual statement filed with its domiciliary jurisdiction, and presenting comparatively the amounts as of December 31 of the most recent calendar year and the amounts as of December 31 of the preceding year.

(E) Financial reports filed pursuant to this section by alien insurers shall conform to the following standards:

(i) Except as provided in clause (ii) of subparagraph (C), financial documents should be certified, if certification of a financial document is not available, the document shall be verified.

(ii) Financial documents should be expressed in United States dollars, but may be expressed in another currency, if the exchange rate for the other currency as of the date of the document is also provided.

(iii) The responses provided pursuant to subparagraph (A) of paragraph (1) on the form submitted in lieu of an annual statement should follow the most recent ISI Guide to Alien Reporting Format, "Standard Definitions of Accounting Items." Responses that do not agree with a standard definition shall be fully explained in the form.

(iv) An audited financial report shall be prepared by an independent licensed auditor in the insurer's domiciliary jurisdiction or in any state.

(v) An audited financial report shall be prepared in accord with either (I) Generally Accepted Auditing Standards that prescribe Generally Accepted Accounting Principles, or (II) International Accounting Standards as published and revised from time to time by the International Auditing Guidelines published by the International Auditing Practice Committee of the International Federation of Accountants; and shall include financial statement notes and a summary of significant accounting practices.

(F) The commissioner may accept, in lieu of a document described above, any certified or verified financial or regulatory document, statement, or report if the commissioner finds that it possesses reliability and financial detail substantially equal to or greater than the document for which it is proposed to be a substitute.

(G) If one of the financial documents required to be submitted under subparagraphs (A) and (B) is dated within 12 months of submission, but the other document is not so dated, the licensee may use the outdated document if it is accompanied by a supplement. The

supplement must meet the same requirements which apply to the supplemented document, and must update the outdated document to a date within the prescribed time period, preferably to the same date as the nonsupplemented document.

(2) A certified copy of the insurer's license issued by its domiciliary jurisdiction, plus a certification of good standing, certificate of compliance, or other equivalent certificate, from either that jurisdiction or, if the jurisdiction does not issue those certificates, from any state where it is licensed.

(3) Information on the insurer's agent in California for service of process, including the agent's full name and address. The agent's address must include a street address where the agent can be reached during normal business hours.

(4) The complete street address, mailing address, and telephone number of the insurer's principal place of business.

(5) A certified or verified explanation, report, or other statement, from the insurance regulatory office or official of the insurer's domiciliary jurisdiction, concerning the insurer's record regarding market conduct and consumer complaints; or, if that information cannot be obtained from that jurisdiction, then any other information that the licensee can procure to demonstrate a good reputation for payment of claims and treatment of policyholders.

(6) A verified statement, from the insurer or licensee, on whether the insurer or any affiliated entity is currently known to be the subject of any order or proceeding regarding conservation, liquidation, or other receivership; or regarding revocation or suspension of a license to transact insurance in any jurisdiction; or otherwise seeking to stop the insurer from transacting insurance in any jurisdiction. The statement shall identify the proceeding by date, jurisdiction, and relief or sanction sought; and shall attach a copy of the relevant order.

(7) A certified copy of the most recent report of examination or an explanation if the report is not available.

(d) (1) Has provided any additional information or documentation required by the commissioner that is relevant to the financial stability, reputation, and integrity of the nonadmitted insurer. In making a determination concerning financial stability, reputation, and integrity of the nonadmitted insurer, the commissioner shall consider any analysis, findings, or conclusion made by the National Association of Insurance Commissioners (NAIC) in its review of the insurer for purposes of inclusion on or exclusion from the list of authorized nonadmitted insurers maintained by the NAIC. The commissioner may, but shall not be required to, rely on, adopt, or otherwise accept any analyses, findings, or conclusions of the NAIC, as the commissioner deems appropriate. In the case of a syndicate seeking eligibility under subparagraph (C) of paragraph (2) of subdivision (a), the commissioner may, but shall not be required to, rely on, adopt, or otherwise accept any analyses,

findings, or conclusions of any state, as the commissioner deems appropriate, as long as that state, in its method of regulation and review, meets the requirements of paragraph (2).

(2) The regulatory body of the state shall regularly receive and review the following: (A) an audited financial statement of the syndicate, prepared by a certified or chartered public accountant; (B) an opinion of a qualified actuary with regard to the syndicate's aggregate reserves for payment of losses or claims and payment of expenses of adjustment or settlement of losses or claims; (C) a certification from the qualified United States financial institution that acts as the syndicate's trustee, respecting the existence and value of the syndicate's trust fund; and (D) information concerning the syndicate's or its manager's operating history, business plan, ownership and control, experience and ability, together with any other pertinent factors, and any information indicating that the syndicate or its manager make reasonably prompt payment of claims in this state or elsewhere. The regulatory body of the state shall have the authority, either by law or through the operation of a valid and enforceable agreement, to review the syndicate's assets and liabilities and audit the syndicate's trust account, and shall exercise that authority with a frequency and in a manner satisfactory to the commissioner.

(e) Has established that:

(1) All documents required by subdivisions (c) and (d) have been filed. Each of the documents appear after review to be complete, clear, comprehensible, unambiguous, accurate, and consistent.

(2) The documents affirm that the insurer is not subject in any jurisdiction to an order or proceeding that:

(A) Seeks to stop it from transacting insurance.

(B) Relates to conservation, liquidation, or other receivership.

(C) Relates to revocation or suspension of its license.

(3) The documents affirm that the insurer has actively transacted insurance for the three years immediately preceding the filing made under this section, unless an exemption is granted. As used in this paragraph, "insurer" does not include a syndicate of underwriting entities. The commissioner may grant an exemption if the licensee has applied for exemption and demonstrates either of the following:

(A) The insurer meets the condition for any exception set forth in subdivision (a), (b), or (c) of Section 716.

(B) If the insurer has been actively transacting insurance for at least 12 months, and the licensee demonstrates that the exemption is warranted because the insurer's current financial strength, operating history, business plan, ownership and control, management experience, and ability, together with any other pertinent factors, make three years of active insurance transaction unnecessary to establish sufficient reputation.

(4) The documents confirm that the insurer holds a license to issue insurance policies (other than reinsurance) to residents of the

jurisdiction that granted the license unless an exemption is granted. The commissioner may grant an exemption if the licensee has applied for an exemption and demonstrates that the exemption is warranted because the insurer proposes to issue in California only commercial coverage, and is wholly owned and actually controlled by substantial and knowledgeable business enterprises that are its policyholders and that effectively govern the insurer's destiny in furtherance of their own business objectives.

(5) The information filed pursuant to paragraph (5) of subdivision (c) or otherwise filed with or available to the commissioner, including reports received from California policyholders, shall indicate that the insurer makes reasonably prompt payment of claims in this state or elsewhere.

(6) The information available to the commissioner shall not indicate that the insurer offers in California a licensee products or rates that violate any provision of this code.

(f) Has been placed on the list of eligible surplus line insurers by the commissioner. The commissioner shall establish a list of all surplus line insurers that have met the requirements of subdivisions (a) to (e), inclusive, and shall publish a master list at least semiannually. Any insurer receiving approval as an eligible surplus line insurer shall be added by addendum to the list at the time of approval, and shall be incorporated into the master list at the next date of publication. If an insurer appears on the most recent list, it shall be presumed that the insurer is an eligible surplus line insurer, unless the commissioner or his or her designee has mailed or causes to be mailed notice to all surplus line brokers that the commissioner has withdrawn the insurer's eligibility. Upon receipt of notice, the surplus line broker shall make no further placements with the insurer. Nothing in this subdivision shall limit the commissioner's discretion to withdraw an insurer's eligibility.

(g) (1) Except as provided by paragraph (2), whenever the commissioner has reasonable cause to believe, and determines after a public hearing, that any insurer on the list established pursuant to subdivision (f), (A) is in an unsound financial condition, (B) does not meet the eligibility requirements under subdivisions (a) to (e), inclusive, (C) has violated the laws of this state, or (D) without justification, or with a frequency so as to indicate a general business practice, delays the payment of just claims, the commissioner may issue an order removing the insurer from the list. Notice of hearing shall be served upon the insurer or its agent for service of process stating the time and place of the hearing and the conduct, condition, or ground upon which the commissioner would make his or her order. The hearing shall occur not less than 20 days, nor more than 30 days after notice is served upon the insurer or its agent for service of process.

(2) If the commissioner determines that an insurer's immediate removal from the list is necessary to protect the public or an insured

or prospective insured of the insurer, or, in the case of an application by an insurer to be placed on the list which is being denied by the commissioner, the commissioner may issue an order pursuant to paragraph (1) without prior notice and hearing. At the time an order is served pursuant to this paragraph to an insurer on the list, the commissioner shall also issue and serve upon the insurer a statement of the reasons that immediate removal is necessary. Any order issued pursuant to this paragraph shall include a notice stating the time and place of a hearing on the order, which shall be not less than 20 days, nor more than 30 days after the notice is served.

(3) Notwithstanding paragraphs (1) and (2), in any case where the commissioner is basing a decision to remove an insurer from the list, or deny an application to be placed on the list, on the failure of the insurer or applicant to comply with, meet or maintain any of the objective criteria established by this section, or by regulation adopted pursuant to this section, the commissioner may so specify this fact in the order, and no hearing shall be required to be held on the order.

(4) Notwithstanding paragraphs (1) and (2), the commissioner may, without prior notice or hearing, remove from the list established pursuant to subdivision (f) any insurer that has failed or refused to timely provide documents required by this section, or any regulations adopted to implement this section. In the case of removal pursuant to this paragraph, the commissioner shall notify all surplus line brokers of the action.

(h) In addition to any other statements or reports required by this chapter, the commissioner may also address to any licensee a written request for full and complete information respecting the financial stability, reputation and integrity of any nonadmitted insurer with whom the licensee has dealt or proposes to deal in the transaction of insurance business. The licensee so addressed shall promptly furnish in written or printed form so much of the information requested as he or she can produce together with a signed statement identifying the same and giving reasons for omissions, if any. After due examination of the information and accompanying statement, the commissioner may, if he or she believes it to be in the public interest, order the licensee in writing to place no further insurance business on property located or operations conducted within or on the lives of persons who are residents of this state with the nonadmitted insurer on behalf of any person. Any placement in the nonadmitted insurer made by a licensee after receipt of that order is a violation of this chapter. The commissioner may issue an order when documents submitted pursuant to subdivisions (c) and (d) do not meet the criteria of subdivisions (a) to (e), inclusive, or when the commissioner obtains documents on an insurer and the insurer does not meet the criteria of subdivisions (a) to (e), inclusive.

(i) The commissioner shall require, at least annually, the submission of records and statements as are reasonably necessary to ensure that the requirements of this section are maintained.

(j) The commissioner shall establish by regulation a schedule of fees to cover costs of administering and enforcing this chapter.

(k) (1) Insurance may be placed on a limited basis with insurers not on the list established pursuant to this section if all of the following conditions are met:

(A) The use of multiple insurers is necessary to obtain coverage for 100 percent of the risk.

(B) At least 80 percent of the risk is placed with admitted insurers or insurers that appear on the list of eligible nonadmitted insurers.

(C) The placing surplus line broker submits to the commissioner, or his or her designee, copies of all documentation relied upon by the surplus line broker to make the broker's determination that the financial stability, reputation, and integrity of the unlisted insurer or insurers, are adequate to safeguard the interest of the insured under the policy. This documentation, and any other documentation regarding the unlisted insurer requested by the commissioner, shall be submitted no more than 30 days after the insurance is placed with the unlisted insurer for the initial placement by that broker with the particular unlisted insurer, and annually thereafter for as long as the broker continues to make placements with the unlisted insurer pursuant to this paragraph.

(D) The insured has aggregate annual premiums for all risks other than workers' compensation or health coverage totaling no less than one hundred thousand dollars ($100,000).

(2) Insurance may not be placed pursuant to paragraph (1) if any of the following applies:

(A) The unlisted insurer has for any reason been objected to by the commissioner pursuant to this section, removed from the list, or denied placement on the list.

(B) The insurance includes coverage for employer-sponsored medical, surgical, hospital, or other health or medical expense benefits payable to the employee by the insurer.

(C) The insurance is mandatory under the laws of the federal government, this state, or any political subdivision thereof, and includes any portion of limits of coverage mandated by those laws.

(D) The insured is a multiple employer welfare arrangement, as defined in Section 1002(40)(A) of Title 29 of the United States Code, or any other arrangement among two or more employers that are not under common ownership or control, which is established or maintained for the primary purpose of providing insurance benefits to the employees of two or more employers.

(E) Unlisted insurers represent a disproportionate portion of the lower layers of the coverage.

(3) Nothing in this section is intended to alter any duties of a surplus line broker pursuant to subdivision (b) of Section 1765 or other laws of this state to safeguard the interests of the insured under the policy in recommending or placing insurance with a nonadmitted insurer.

(4) Placements authorized by this subdivision are intended to provide sophisticated insurance purchasers with a means to obtain necessary commercial insurance coverage from nonadmitted insurers not listed by the commissioner in situations where it is not commercially possible to fully obtain that coverage from either admitted or listed insurers. This subdivision shall not be deemed to permit surplus line brokers to place with nonadmitted insurers common commercial or personal line coverages for insureds that can be placed with insurers that are admitted or listed pursuant to this section, whether the insured is an individual insured, or a group created primarily for the purpose of purchasing insurance.

(*l*) As used in this section:

(1) "Certified" means an originally signed or sealed statement, dated not more than 60 days before submission, made by a public official or other person, attached to a copy of a document, that attests that the copy is a true copy of the original, and that the original is in the custody of the person making the statement.

(2) "Domiciliary jurisdiction" means the state, nation, or subdivision thereof under the laws of which an insurer is incorporated or otherwise organized.

(3) "Domiciliary state of the syndicate's trust" means the state in which the syndicate's trust fund is principally maintained and administered for the benefit of the syndicate's policyholders in the United States.

(4) "IID" means the International Insurers Department.

(5) "Insurer" means (unless the context indicates otherwise) "nonadmitted" insurers that are either "foreign" or "alien" insurers, as those terms are defined in Sections 25, 27, and 1580, and syndicates whose members consist of individual incorporated insurers who are not engaged in any business other than underwriting as a member of the group and individual unincorporated insurers, provided all the members are subject to the same level of solvency regulation and control by the group's domiciliary regulator. The term "insurer" includes all nonadmitted insurers selling insurance to or through purchasing groups as defined in the Liability Risk Retention Act of 1986 (15 U.S.C. Sec. 3901 et seq.) and the California Risk Retention Act of 1990 (Chapter 1.5 (commencing with Section 125) of Part 1 of Division 1), except insurers that are risk retention groups as defined by those acts.

(6) "ISI" means Insurance Solvency International.

(7) "Licensee" means a surplus line broker as defined in Section 47.

(8) "NAIC" means the National Association of Insurance Commissioners or its successor organization.

(9) "NAIIO" means the Nonadmitted Alien Insurer Information Office of the NAIC or its successor office.

(10) "State" means any state of the United States; the District of Columbia; a commonwealth, or a territory.

(11) "Verified" means a document or copy accompanied by an originally signed statement, dated not more than 60 days before submission, from a responsible executive or official who has authority to provide the statement and knowledge whereof he or she speaks, attesting either under oath before a notary public, or under penalty of perjury under California law, that the assertions made in the document are true.

(m) With respect to a nonadmitted insurer that is listed as an authorized surplus line insurer as of December 31, 1994, pursuant to Sections 2174.1 to 2174.14, inclusive, of Title 10 of the California Code of Regulations, this section shall not be effective until the subsequent expiration of the listing of that insurer. Nothing in the bill that amended this section during the 1994 portion of the 1993–94 Regular Session is intended to repeal or imply there is not authority to adopt, or to have adopted, or to continue in force, any regulation, or part thereof, with respect to surplus line insurance which is not clearly inconsistent with it.

SEC. 5. Section 4 of this bill incorporates amendments to Section 1765.1 of the Insurance Code proposed by both this bill and SB 237. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 1765.1 of the Insurance Code, and (3) this bill is enacted after SB 237, in which case Section 3 of this bill shall not become operative.

CHAPTER 270

An act to repeal and add Section 1063.6 of the Insurance Code, relating to insurer insolvency.

[Approved by Governor August 10, 1998. Filed with Secretary of State August 10, 1998.]

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

SECTION 1. Section 1063.6 of the Insurance Code is repealed.

SEC. 2. Section 1063.6 is added to the Insurance Code, to read:

1063.6. All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in the state shall, subject to waiver by the association in specific cases involving covered claims and subject to waiver by the commissioner as to matters that are not covered claims, be stayed for 60 days from the date that an order of liquidation or an order of receivership with a finding of insolvency has been entered by a superior court in this state or by a court in the state of domicile of the insurer, and an additional time thereafter as may be determined necessary by the court to permit proper defense or conduct of all pending causes of action by the association or the commissioner, as applicable. The stay as to matters to which the

insolvent insurer is a party shall be superseded by and when an injunction or stay order is entered by the court in this state having jurisdiction of the liquidation or the ancillary liquidation.

The liquidator, receiver, or statutory successor of an insolvent member insurer shall permit reasonable access by the association to the solvent insurer's records as is necessary for the association to carry out its duties with regard to covered claims. In addition, the liquidator, receiver, or statutory successor shall provide the association with copies of these records upon the reasonable request of the association and at the expense of the association.

CHAPTER 271

An act to add Section 420.1 to the Penal Code, relating to trespass.

[Approved by Governor August 10, 1998. Filed with Secretary of State August 10, 1998.]

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

SECTION 1. Section 420.1 is added to the Penal Code, to read:

420.1. Anyone who willfully and knowingly prevents, hinders, or obstructs any person from entering, passing over, or leaving land in which that person enjoys, either personally or as an agent, guest, licensee, successor-in-interest, or contractor, a right to enter, use, cross, or inspect the property pursuant to an easement, covenant, license, profit, or other interest in the land, is guilty of an infraction punishable by a fine not to exceed five hundred dollars ($500), provided that the interest to be exercised has been duly recorded with the county recorder's office. This section shall not apply to the following persons: (1) any person engaged in lawful labor union activities that are permitted to be carried out by state or federal law; or (2) any person who is engaging in activities protected by the California Constitution or the United States Constitution.

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 that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative

on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 272

An act to amend Section 21066 of, and to add Section 21006 to, the Public Resources Code, relating to environmental quality.

[Approved by Governor August 10, 1998. Filed with Secretary of State August 10, 1998.]

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

SECTION 1. The Legislature finds and declares that the addition of Section 21006 to, and the amendment of Section 21066 of, the Public Resources Code by this act to include the United States or any of its agencies or political subdivisions within the definition of "person" for the purposes of the California Environmental Quality Act does not constitute a change in, but is declaratory of, existing law.

SEC. 2. Section 21006 is added to the Public Resources Code, to read:

21006. The Legislature finds and declares that this division is an integral part of any public agency's decisionmaking process, including, but not limited to, the issuance of permits, licenses, certificates, or other entitlements required for activities undertaken pursuant to federal statutes containing specific waivers of sovereign immunity.

SEC. 3. Section 21066 of the Public Resources Code is amended to read:

21066. "Person" includes any person, firm, association, organization, partnership, business, trust, corporation, limited liability company, company, district, county, city and county, city, town, the state, and any of the agencies and political subdivisions of those entities, and, to the extent permitted by federal law, the United States, or any of its agencies or political subdivisions.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a 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, within the meaning of Section 17556 of the Government Code.

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

CHAPTER 273

An act to amend Section 23104.2 of the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor August 10, 1998. Filed with Secretary of State August 10, 1998.]

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

SECTION 1. Section 23104.2 of the Business and Professions Code is amended to read:

23104.2. (a) Subject to the exceptions specified in subdivision (b), a retail licensee may return beer to the wholesaler or manufacturer from whom the retail licensee purchased the beer, or any successor thereto, and the wholesaler, manufacturer, or successor thereto may accept that return if the beer is returned in exchange for the identical quantity and brand of beer. No wholesaler or manufacturer, or any successor thereto, shall accept the return of any beer from a retail licensee except when the beer delivered was not the brand or size container ordered by the retail licensee, or the amount delivered was other than the amount ordered, in which case the order may be corrected by the wholesaler or manufacturer who sold the beer, or any successor thereto. If a package had been broken or otherwise damaged prior to or at the time of actual delivery, a credit memorandum may be issued for the returned package by the wholesaler or manufacturer who sold the beer, or any successor thereto, in lieu of exchange for an identical package when the return and corrections are completed within 15 days from the date the beer was delivered to the retail licensee.

(b) Notwithstanding subdivision (a), a wholesaler or manufacturer, or any successor thereto, may accept the return of beer purchased from that wholesaler, manufacturer, or successor thereto, as follows:

(1) (A) From a seasonal or temporary licensee if at the termination of the period of the license the seasonal or temporary licensee has beer remaining unsold, or from an annual licensee operating on a temporary basis if at the termination of the temporary period the annual licensee has beer remaining unsold.

(B) For purposes of this subparagraph (A), an annual licensee shall be considered to be operating on a temporary basis if he or she operates at seasonal resorts, including summer and winter resorts, or at sporting or entertainment facilities, including racetracks, arenas, concert halls, and convention centers. Temporary status shall be deemed terminated when operations cease for 15 days or more. No wholesaler or manufacturer, or successor thereto, shall accept the return of beer from an annual licensee considered to be operating on a temporary basis, unless the licensee notifies that wholesaler or

manufacturer, or successor thereto within 15 days of the date the licensee's operations ceased.

(2) (A) Subject to subparagraph (B), a wholesaler or manufacturer, or any successor thereto, may, with department approval, accept the return of a brand of beer discontinued in a California market area or a seasonal brand of beer from a retail licensee, provided that the beer is exchanged for a quantity of beer of a brand produced or sold by the same manufacturer with a value no greater than the original sales price to the retail licensee of the returned beer. For purposes of this subparagraph, "seasonal brand of beer" means a brand of beer, as defined in Section 23006, that is brewed by a manufacturer to commemorate a specific holiday season and is so identified by appropriate product packaging and labeling.

(B) A discontinued brand of beer may not be reintroduced for a period of 12 months in the same California market area in which a return and exchange of that beer as described in subparagraph (A) has taken place. A seasonal brand of beer may not be reintroduced for a period of six months in the same California market area in which a return and exchange of that beer as described in subparagraph (A) has taken place.

CHAPTER 274

An act relating to the Department of Pesticide Regulation, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 10, 1998. Filed with Secretary of State August 10, 1998.]

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

SECTION 1. The sum of one hundred forty-five thousand dollars ($145,000) is hereby appropriated from the General Fund to the Department of Pesticide Regulation for expenditure for purposes of implementing a two-stage air monitoring plan in the City of Lompoc as recommended by the Lompoc Interagency Work Group.

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 funding for the implementation of the air monitoring plan in the City of Lompoc, as proposed by this act, may be made available at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 275

An act to add Section 12304.6 to the Welfare and Institutions Code, relating to human services.

[Approved by Governor August 10, 1998. Filed with Secretary of State August 10, 1998.]

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

SECTION 1. Section 12304.6 is added to the Welfare and Institutions Code, to read:

12304.6. The county welfare department shall provide to each visually impaired applicant or recipient of benefits under this article, upon determination or redetermination of eligibility for benefits under this article, information on, and referral services to, community public and nonprofit entities that provide reading services to visually impaired persons.

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

CHAPTER 276

An act to amend Sections 2676 and 2678 of the Labor Code, relating to garment manufacturing.

[Approved by Governor August 10, 1998. Filed with Secretary of State August 10, 1998.]

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

SECTION 1. Section 2676 of the Labor Code is amended to read:

2676. Any person engaged in the business of garment manufacturing who is not registered is guilty of a misdemeanor, except as provided in subdivision (d) of Section 2678.

SEC. 2. Section 2678 of the Labor Code is amended to read:

2678. (a) A penalty, as provided in subdivision (c), may be imposed against any person for any of the following:

(1) Failure to comply within 15 days of any judgment due for violation of any labor laws applicable to garment industry workers.

(2) Failure to comply with the registration requirements of this part.

(3) Failure to comply with Section 2673 or any section enumerated in Section 2675.

(b) The order imposing the penalty may be served personally or by registered mail in accordance with subdivision (c) of Section 11505 of the Government Code. The order shall be in writing and shall describe the nature of the violation, including reference to the statutory provisions, rules, or regulations alleged to have been violated.

(c) The penalties shall be a civil penalty of one hundred dollars ($100) for each affected employee for the initial violation and a civil penalty of two hundred dollars ($200) for each affected employee for the second or subsequent violation.

(d) If a person is subject to civil penalties for a violation described in subdivision (a), but does not employ one or more workers, the civil penalty shall be five hundred dollars ($500), and the person shall not be guilty of a misdemeanor as specified in Section 2676.

CHAPTER 277

An act to amend Section 25510 of the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor August 10, 1998. Filed with Secretary of State August 10, 1998.]

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

SECTION 1. Section 25510 of the Business and Professions Code is amended to read:

25510. Notwithstanding any other provision of this chapter, a manufacturer may furnish to a licensed wholesaler, and a licensed wholesaler or manufacturer may furnish to an on-sale licensee, only the following specified items of alcoholic beverage tapping equipment: kegs, tapping heads, air lines, alcoholic beverage lines, clamps, washers, coupling devices, rods, vents, valves, and keg spacers, for an initial installation in a new on-sale licensed account or for a changeover of equipment from one tapping system to another. A supplier may service, repair, and replace the above-specified items of alcoholic beverage tapping equipment as necessary. This section shall not permit a supplier to furnish or repair alcoholic beverage equipment not specified in this section to an on-sale licensee.

Alcoholic beverage tapping equipment furnished by a supplier shall remain the property of the supplier.

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 that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 278

An act to amend Sections 192 and 193 of the Penal Code, relating to homicide.

[Approved by Governor August 10, 1998. Filed with Secretary of State August 10, 1998.]

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

SECTION 1. Section 192 of the Penal Code is amended to read:

192. Manslaughter is the unlawful killing of a human being without malice. It is of three kinds:

(a) Voluntary—upon a sudden quarrel or heat of passion.

(b) Involuntary—in the commission of an unlawful act, not amounting to felony; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection. This subdivision shall not apply to acts committed in the driving of a vehicle.

(c) Vehicular—

(1) Except as provided in Section 191.5, driving a vehicle in the commission of an unlawful act, not amounting to felony, and with gross negligence; or driving a vehicle in the commission of a lawful act which might produce death, in an unlawful manner, and with gross negligence.

(2) Except as provided in paragraph (3), driving a vehicle in the commission of an unlawful act, not amounting to felony, but without gross negligence; or driving a vehicle in the commission of a lawful act which might produce death, in an unlawful manner, but without gross negligence.

(3) Driving a vehicle in violation of Section 23140, 23152, or 23153 of the Vehicle Code and in the commission of an unlawful act, not

amounting to felony, but without gross negligence; or driving a vehicle in violation of Section 23140, 23152, or 23153 of the Vehicle Code and in the commission of a lawful act which might produce death, in an unlawful manner, but without gross negligence.

(4) Driving a vehicle in connection with a violation of paragraph (3) of subdivision (a) of Section 550, where the vehicular collision or vehicular accident was knowingly caused for financial gain and proximately resulted in the death of any person. This provision shall not be construed to prevent prosecution of a defendant for the crime of murder.

This section shall not be construed as making any homicide in the driving of a vehicle punishable which is not a proximate result of the commission of an unlawful act, not amounting to felony, or of the commission of a lawful act which might produce death, in an unlawful manner.

"Gross negligence," as used in this section, shall not be construed as prohibiting or precluding a charge of murder under Section 188 upon facts exhibiting wantonness and a conscious disregard for life to support a finding of implied malice, or upon facts showing malice, consistent with the holding of the California Supreme Court in People v. Watson, 30 Cal. 3d 290.

SEC. 2. Section 193 of the Penal Code is amended to read:

193. (a) Voluntary manslaughter is punishable by imprisonment in the state prison for three, six, or eleven years.

(b) Involuntary manslaughter is punishable by imprisonment in the state prison for two, three, or four years.

(c) Vehicular manslaughter is punishable as follows:

(1) A violation of paragraph (1) of subdivision (c) of Section 192 is punishable either by imprisonment in the county jail for not more than one year or by imprisonment in the state prison for two, four, or six years.

(2) A violation of paragraph (2) of subdivision (c) of Section 192 is punishable by imprisonment in the county jail for not more than one year.

(3) A violation of paragraph (3) of subdivision (c) of Section 192 is punishable either by imprisonment in the county jail for not more than one year or by imprisonment in the state prison for 16 months or two or four years.

(4) A violation of paragraph (4) of subdivision (c) of Section 192 is punishable by imprisonment in the state prison for 4, 6, or 10 years.

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 that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 279

An act to amend Section 538d of, and to add Section 667.17 to, the Penal Code, relating to crimes.

[Approved by Governor August 10, 1998. Filed with Secretary of State August 10, 1998.]

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

SECTION 1. Section 538d of the Penal Code is amended to read:

538d. (a) Any person other than one who by law is given the authority of a peace officer, who willfully wears, exhibits, or uses the authorized uniform, badge, insignia, emblem, device, label, certificate, card, or writing, of a peace officer, with the intent of fraudulently impersonating a peace officer, or of fraudulently inducing the belief that he or she is a peace officer, is guilty of a misdemeanor.

(b) Any person who willfully wears, exhibits, or uses, or who willfully makes, sells, loans, gives, or transfers to another, any badge, insignia, emblem, device, or any label, certificate, card, or writing, which falsely purports to be authorized for the use of one who by law is given the authority of a peace officer, or which so resembles the authorized badge, insignia, emblem, device, label, certificate, card, or writing of a peace officer as would deceive an ordinary reasonable person into believing that it is authorized for the use of one who by law is given the authority of a peace officer, is guilty of a misdemeanor.

SEC. 2. Section 667.17 is added to the Penal Code, to read:

667.17. Any person who violates the provisions of Section 538d during the commission of a felony shall receive an additional one-year term of imprisonment to be imposed consecutive to the term imposed for the felony, in lieu of the penalty that would have been imposed under Section 538d.

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 that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 280

An act to add Section 17539.15 to the Business and Professions Code, relating to contest advertising.

[Approved by Governor August 10, 1998. Filed with Secretary of State August 10, 1998.]

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

SECTION 1. Section 17539.15 is added to the Business and Professions Code, to read:

17539.15. (a) Solicitation materials containing sweepstakes entry materials shall not represent, taking into account the context in which the representation is made, including, without limitation, emphasis, print, size, color, location, and presentation of the representation and any qualifying language, that a person is a winner or has already won a prize unless that person has in fact won a prize. If the representation is made on or visible through the mailing envelope containing the sweepstakes materials, the context in which the representation is to be considered, including any qualifying language, shall be limited to that which appears on, appears from, or is visible through the mailing envelope.

(b) Solicitation materials containing sweepstakes entry materials shall include a prominent statement of the no purchase necessary message, in readily understandable terms, in the official rules included in those solicitation materials, and, if the official rules do not appear thereon, on the entry-order device included in those solicitation materials. The no purchase necessary message included in the official rules shall be set out in a separate paragraph in the official rules and be printed in capital letters in contrasting typeface not smaller than the largest typeface used in the text of the official rules.

(c) Sweepstakes entries not accompanied by an order for products or services shall not to be subjected to any disability or disadvantage in the winner selection process to which an entry accompanied by an order for products or services would not be subject.

(d) Sweepstakes materials containing sweepstakes entry materials shall not represent that an entry in the promotional sweepstakes accompanied by an order for products or services, will be eligible to receive additional prizes or be more likely to win than an entry not accompanied by an order for products or services, or that

an entry not accompanied by an order for products or services will have a reduced chance of winning a prize in the promotional sweepstakes.

(e) For purposes of this section:

(1) "No purchase necessary message" means a statement to the effect that no purchase is necessary as a condition of entering the promotional sweepstakes.

(2) "Official rules" means the formal printed statement, however designated, of the rules for the promotional sweepstakes appearing in the solicitation materials. The official rules shall be prominently identified and all references thereto in any solicitation materials shall consistently use the designation for the official rules that appears in those materials. Each sweepstakes solicitation shall contain a copy of the official rules.

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 that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 281

An act to add Section 25216.3 to the Health and Safety Code, relating to hazardous waste.

[Approved by Governor August 10, 1998. Filed with Secretary of State August 10, 1998.]

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

SECTION 1. Section 25216.3 is added to the Health and Safety Code, to read:

25216.3. (a) For purposes of this section, "spent dry cell battery containing zinc electrodes" means an alkaline or zinc-carbon battery, that meets all of the following conditions:

(1) It is an enclosed device or sealed container consisting of one or more voltaic or galvanic cells, electrically connected to produce electric energy, of any shape, including, but not limited to, button, coin, cylindrical, or rectangular, and designed for commercial, industrial, medical, institutional, or household use.

(2) It contains an electrode comprised of zinc or zinc oxide or a combination thereof, and a liquid starved or gelled electrolyte.

(3) It does not contain any constituent, other than zinc or zinc oxide, that would cause it to be classified as a hazardous waste pursuant to this chapter.

(4) It is discarded by the user.

(b) Notwithstanding any other provision of law, a spent dry cell battery containing zinc electrodes is not a hazardous waste, and is not subject to the requirements of this chapter, if all of the following conditions are met:

(1) The spent dry cell battery containing zinc electrodes is disposed of in a permitted municipal solid waste landfill, as defined in Section 20164 of Title 27 of the California Code of Regulations, or in a permitted municipal solid waste transformation facility, as defined in Section 40201 of the Public Resources Code, or is accumulated for recycling.

(2) The spent dry cell battery containing zinc electrodes is not stored or accumulated for longer than 180 days. In addition, at least 75 percent, by weight or volume, of all spent dry cell batteries containing zinc electrodes stored or accumulated at a site during a calendar year shall be transferred to a different site for disposal or recycling during that calendar year.

(3) The spent dry cell battery containing zinc electrodes is stored, accumulated, and transferred in a manner that minimizes the possibility of fire, explosion, or any release of hazardous substances or hazardous waste constituents.

CHAPTER 282

An act to amend Section 4600.7 of the Labor Code, relating to the Workers' Compensation Managed Care Fund.

[Approved by Governor August 10, 1998. Filed with Secretary of State August 10, 1998.]

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

SECTION 1. Section 4600.7 of the Labor Code is amended to read:

4600.7. (a) The Workers' Compensation Managed Care Fund is hereby created in the State Treasury for the administration of Sections 4600.3 and 4600.5 by the Division of Workers' Compensation. The administrative director shall establish a schedule of fees and revenues to be charged to certified health care organizations and applicants for certification to fully fund the administration of these provisions and to repay amounts received as a loan from the General Fund. All fees and revenues shall be deposited in the Workers'

Compensation Managed Care Fund and shall be used when appropriated by the Legislature solely for the purpose of carrying out the responsibilities of the Division of Workers' Compensation under Section 4600.3 or 4600.5.

(b) On and after July 1, 1998, no funds received as a loan from the General Fund shall be used to support the administration of Sections 4600.3 and 4600.5. The loan amount shall be repaid to the General Fund by assessing a surcharge on the enrollment fee for each of the next five fiscal years. In the event the surcharge does not produce sufficient revenue over this period, the surcharge shall be adjusted to fully repay the loan over the following three fiscal years, with the final assessment calculated by dividing the balance of the loan by the enrollees at the end of the final fiscal year.

CHAPTER 283

An act to amend Sections 65940.5, 65950, 65951, and 65957 of the Government Code, relating to land use.

[Approved by Governor August 10, 1998. Filed with Secretary of State August 10, 1998.]

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 an extension or 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 an extension or 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 extension of the time limits pursuant to Section 65950.1, no public agency shall require an extension or 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. (a) Any public agency that is the lead agency for a development project shall approve or disapprove the project within whichever of the following periods is applicable:

(1) One hundred eighty days from the date of certification by the lead agency of the environmental impact report if an environmental impact report is prepared pursuant to Section 21100 or 21151 of the Public Resources Code for the development project.

(2) Sixty days from the date of adoption by the lead agency of the negative declaration if a negative declaration is completed and adopted for the development project.

(3) Sixty days from the determination by the lead agency that the project is exempt from the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) if the project is exempt from the California Environmental Quality Act.

(b) Nothing in this section precludes a project applicant and a public agency from mutually agreeing in writing to an extension of any time limit provided by this section pursuant to Section 65957.

(c) For purposes of this section, "lead agency" and "negative declaration" shall have the same meaning as those terms are defined in Sections 21067 and 21064 of the Public Resources Code, respectively.

SEC. 3. Section 65951 of the Government Code is amended to read:

65951. In the event that a combined environmental impact report-environmental impact statement is being prepared on a development project pursuant to Section 21083.6 of the Public Resources Code, a lead agency shall approve or disapprove the project within 90 days after the combined environmental impact report-environmental impact statement has been completed and adopted.

SEC. 4. Section 65957 of the Government Code is amended to read:

65957. The time limits established by Sections 65950, 65950.1, 65951, and 65952 may be extended once upon mutual written agreement of the project applicant and the public agency for a period not to exceed 90 days from the date of the extension. No other extension, continuance, or waiver of these time limits either by the project applicant or the lead agency shall be permitted, except as provided in this section and Section 65950.1. Failure of the lead agency to act within these time limits may result in the project being deemed approved pursuant to the provisions of subdivision (b) of Section 65956.

SEC. 5. The Legislature finds and declares that it is aware of the California Supreme Court's decision in Bickel v. City of Piedmont (1997), 16 Cal. 4th 1040. In enacting this act, it is the intent of the Legislature to clarify that the Permit Streamlining Act (Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code) does not provide for the application of the common law doctrine of waiver by either the act's purpose or its statutory language.

CHAPTER 284

An act to add Section 67381 to the Education Code, relating to student safety.

[Approved by Governor August 11, 1998. Filed with Secretary of State August 11, 1998.]

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

SECTION 1. Section 67381 is added to the Education Code, to read:

67381. (a) The Legislature reaffirms that campus law enforcement agencies have the primary authority for providing police or security services, including the investigation of criminal activity, to their campuses.

(b) The governing board of each community college district, the Trustees of the California State University, the Regents of the University of California, and the governing board of independent postsecondary institutions, as defined, shall adopt rules requiring each of their respective campuses to enter into written agreements with local law enforcement agencies that clarify operational responsibilities for investigations of Part 1 violent crimes occurring on each campus.

(c) Local law enforcement agencies shall enter into written agreements with campus law enforcement agencies if there are college or university campuses located in the jurisdictions of the local law enforcement agencies.

(d) Each written agreement entered into pursuant to this section shall designate which law enforcement agency shall have operational responsibility for the investigation of each Part 1 violent crime and delineate the specific geographical boundaries of each agency's operational responsibility, including maps as necessary.

(e) Written agreements entered into pursuant to this section shall be in place and available for public viewing by July 1, 1999. Each of the entities identified in subdivision (b) shall transmit a copy of each written agreement it has entered into pursuant to this section, and any other information it deems pertinent to its implementation of this section, to the Legislative Analyst on or before September 1, 1999.

(f) Each agency shall be responsible for its own costs of investigation unless otherwise specified in a written agreement.

(g) Nothing in this section shall affect existing written agreements between campus law enforcement agencies and local law enforcement agencies that otherwise meet the standards contained in subdivision (d) or any existing mutual aid procedures established pursuant to state or federal law.

(h) Nothing in this section shall be construed to limit the authority of campus law enforcement agencies to provide police services to their campuses.

(i) As used in this section, the following terms have the following meanings:

(1) "Local law enforcement agencies" means city or county law enforcement agencies with operational responsibilities for police services in the community in which a campus is located.

(2) "Part 1 violent crimes" means willful homicide, forcible rape, robbery, and aggravated assault, as defined in the Uniform Crime Reporting Handbook of the Federal Bureau of Investigation.

(3) "Independent postsecondary institutions" means institutions operating pursuant to Section 830.6 of the Penal Code or pursuant to a memorandum of understanding as described in subdivision (b) of Section 830.7 of the Penal Code.

(j) This section shall be known and may be cited as the Kristin Smart Campus Safety Act of 1998.

(k) It is the intent of the Legislature by enacting this section to provide the public with clear information regarding the operational responsibilities for the investigation of crimes occurring on university and college campuses by setting minimum standards for written agreements to be entered into by campus law enforcement agencies and local law enforcement agencies.

SEC. 2. Not later than March 1, 2000, the Legislative Analyst shall report to the Legislature regarding the implementation of Section 67381 of the Education Code. The report required by this section shall include any pertinent recommendations of the Legislative Analyst, and may be submitted as part of the analysis of the Budget Act of 2000.

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

CHAPTER 285

An act to amend Sections 12693.38, 12693.90, and 12693.96 of the Insurance Code, relating to children's health care, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 12, 1998. Filed with Secretary of State August 13, 1998.]

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

SECTION 1. Section 12693.38 of the Insurance Code is amended to read:

12693.38. (a) The board shall contract with a sufficient number of dental and vision plans to assure that dental and vision benefits are available to all subscribers. The board shall develop and make available objective criteria for dental and vision plan selection and provide adequate notice of the application process to permit all dental and vision plans a reasonable and fair opportunity to participate. The criteria and application process shall allow participating dental and vision plans to comply with their state and federal licensing and regulatory obligations, except as otherwise provided in this part. Dental and vision plan selection shall be based on the criteria developed by the board.

(b) Participating dental plans shall be required to submit to the board on an annual basis a report summarizing their provider network. The report shall provide, as available, information on the provider network as it relates to each of the following:

(1) Geographic access for the subscribers.

(2) Linguistic services.

(3) The ethnic composition of providers.

(c) The board shall establish reasonable limits on dental plan administrative costs.

SEC. 2. Section 12693.90 of the Insurance Code is amended to read:

12693.90. (a) The board shall appoint a 15-member advisory panel to advise the board, the chair of which may serve as an ex officio, nonvoting member of the board. The panel shall be appointed and ready to perform its duties by no later than February 1, 1998.

(b) The membership of the advisory panel shall be composed of all of the following:

(1) Three representatives from the subscriber population.

(2) One physician and surgeon who is board certified in pediatrics.

(3) One physician and surgeon who is board certified in the area of family practice medicine.

(4) One member who is a licensed, practicing dentist.

(5) One representative from a licensed nonprofit primary care clinic.

(6) One representative from a licensed hospital that is on the disproportionate share list maintained by the State Department of Health Services.

(7) One representative of the mental health provider community.

(8) One representative of the substance abuse provider community.

(9) One representative of the county public health provider community.

(10) One representative from the education community.

(11) One representative from the health plan community.

(12) One representative from the business community.

(13) One representative from an eligible family with children with special needs.

(c) The advisory board members shall have demonstrated expertise in the provision of health-related services to children aged 18 years and under, as applicable.

(d) The advisory board members shall be composed of representatives of the geographic, cultural, economic, and other social factors of the state.

(e) The panel shall elect, from among its members, its chair.

(f) The panel shall have all of the following powers and duties:

(1) To advise the board on all policies, regulations, operations, and implementation of the program.

(2) To consider all written recommendations of the panel and respond in writing when the board rejects the advice of the panel.

(3) To meet at least quarterly, unless deemed unnecessary by the chair.

(g) The members of the panel shall be reimbursed for all necessary travel expenses associated with the activities of the panel.

(h) The members of the panel who represent the subscriber population may receive per diem compensation if they are otherwise economically unable to meet panel responsibilities.

SEC. 3. Section 12963.96 of the Insurance Code is amended to read:

12963.96. (a) There is hereby created in the State Treasury the Healthy Families Fund which is, notwithstanding Section 13340 of the Government Code, continuously appropriated to the board for the purposes specified in this part.

(b) The board shall authorize the expenditure from the fund of any state funds, federal funds, or family contributions deposited into the fund. This shall include the authority for the board to authorize the State Department of Health Services to transfer funds appropriated to the department for the program to the Healthy Families Fund, and to also deposit those funds in, and to disburse those funds from, the Healthy Families Fund.

(c) Notwithstanding any other provision of law, this part shall be implemented only if, and to the extent that, as provided under Title XXI of the Social Security Act, federal financial participation is available and state plan approval is obtained.

(d) Nothing in this part is intended to establish an entitlement for individual coverage.

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 obtain information on the provider networks of participating dental plans and to limit their administrative costs, and to allow the Healthy Families Advisory Board to perform its duties with the benefit of a dentist's input, as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 286

An act to add Sections 7685.5, 9663, and 17530.7 to the Business and Professions Code, relating to cemetery and funeral fraud.

[Approved by Governor August 12, 1998. Filed with Secretary of State August 13, 1998.]

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

SECTION 1. Section 7685.5 is added to the Business and Professions Code, to read:

7685.5. (a) The Department of Consumer Affairs shall make available to funeral establishments and cemetery authorities a copy of a consumer guide for funeral and cemetery purchases for purposes of reproduction and distribution. The funeral and cemetery guide that is approved by the Department of Consumer Affairs, in consultation with the funeral and cemetery industries and any other interested parties, shall be made available in printed form and electronically through the Internet.

(b) A funeral establishment shall prominently display and make available to any individual who, in person, inquires about funeral or cemetery purchases, a copy of the consumer guide for funeral and cemetery purchases, reproduced as specified in subdivision (a).

SEC. 2. Section 9663 is added to the Business and Professions Code, to read:

9663. (a) The Department of Consumer Affairs shall make available to funeral establishments and cemetery authorities a copy of a consumer guide for funeral and cemetery purchases for purposes of reproduction and distribution. The funeral and cemetery guide that is approved by the Department of Consumer Affairs, in consultation with the funeral and cemetery industries and any other interested parties, shall be made available in printed form and electronically through the Internet.

(b) A cemetery authority shall prominently display and make available to any individual who, in person, inquires about funeral or cemetery purchases, a copy of the consumer guide for funeral and cemetery purchases, reproduced as specified in subdivision (a).

SEC. 3. Section 17530.7 is added to the Business and Professions Code, to read:

17530.7. It is unlawful for any person, other than a funeral director as defined in Section 7615, to sell, or offer to sell, on a retail basis, a casket, alternative container, or outer burial container, unless that person does all of the following:

(a) Provides to any person, upon beginning any discussion of prices, a written or printed list containing, but not necessarily limited to, the price of all caskets and containers that are normally offered for sale by that seller. The seller shall also provide a written statement or list that, at a minimum, specifically identifies particular caskets or containers by price and by thickness of metal, type of wood, or other construction, and by interior and color, when a request for specific information on caskets or containers is made in person by any individual. This information shall also be provided over the telephone, upon request.

(b) Places the price in a conspicuous manner on each casket. Individual price tags on caskets shall include the thickness of metal and type of wood or other construction, as applicable, in addition to interior and color information.

(c) Places in a conspicuous manner on each casket represented as having a sealing device of any kind, the following notices in at least eight-point boldface type: "THERE IS NO SCIENTIFIC OR OTHER EVIDENCE THAT ANY CASKET WITH A SEALING DEVICE WILL PRESERVE HUMAN REMAINS."

(d) Furnishes to the buyer prior to the sale, a written or printed itemized statement of all costs associated with the sale.

(e) Provides to the buyer a statement that includes a notice to the buyer that he or she may contact the office of the district attorney in that jurisdiction with any questions or complaints. At a minimum, the information shall be in eight-point boldface type, and state the following: "THE SELLER IS NOT A FUNERAL DIRECTOR AND IS NOT LICENSED BY THE DEPARTMENT OF CONSUMER AFFAIRS, AND MAY NOT OFFER OR PERFORM FUNERAL SERVICES. STATE AND FEDERAL LAWS PROHIBIT A FUNERAL DIRECTOR FROM CHARGING HANDLING FEES FOR A CASKET SUPPLIED BY ANOTHER PARTY. THE MONEYS RECEIVED BY THE SELLER FOR THE PURCHASE OF A CASKET ARE NOT SUBJECT TO STATE LAW GOVERNING MONEY HELD IN TRUST. THE SELLER IS NOT BOUND BY STATE LAWS OR REGULATIONS THAT GOVERN FUNERAL HOMES AND CEMETERIES. THE PURCHASER ENTERS THIS AGREEMENT AT HIS OR HER OWN RISK. FOR MORE INFORMATION, CONTACT THE OFFICE OF THE DISTRICT ATTORNEY IN YOUR COUNTY."

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will

be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 287

An act to add Section 1812.5093 to the Civil Code, and to amend Section 1596.65 of the Health and Safety Code, relating to employment agencies.

[Approved by Governor August 12, 1998. Filed with Secretary of State August 13, 1998.]

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

SECTION 1. Section 1812.5093 is added to the Civil Code, immediately preceding Section 1812.5095, to read:

1812.5093. (a) Every employment agency that refers a child care provider to an employer who is not required to be a licensed child day care facility pursuant to Section 1596.792 of the Health and Safety Code shall provide the employer with all the following:

(1) A description of the child care provider trustline registry established pursuant to Chapter 3.35 (commencing with Section 1596.60) of Division 2 of the Health and Safety Code that provides criminal history checks on child care providers.

(2) An explanation of how an employer may obtain more information about the child care provider trustline registry.

(3) A statement that an employment agency is prohibited by law from placing a child care provider unless the provider is a trustline applicant or a registered child care provider.

(4) An explanation of how the employer may verify the prospective child care provider's trustline registry registration.

(b) Receipt of the information required to be provided pursuant to subdivision (a) shall be verified in writing by the employer.

SEC. 2. Section 1596.65 of the Health and Safety Code is amended to read:

1596.65. (a) An employment agency, as defined in Section 1812.501 of the Civil Code, that refers a child care provider to parents or guardians who are not required to be a licensed child day care facility shall not make a placement of a child care provider who is not a trustline applicant or a registered child care provider.

(b) Any violation of this section is a misdemeanor and shall be punishable by a fine of 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 that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 288

An act to amend Sections 34030 and 34700 of the Water Code, to amend Section 17 of the Drainage District Act of 1903 (Chapter 238 of the Statutes of 1903), and to amend Section 6 of Chapter 641 of the Statutes of 1931, relating to water.

[Approved by Governor August 12, 1998. Filed with Secretary of State August 13, 1998.]

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

SECTION 1. Section 34030 of the Water Code is amended to read:

34030. "Legal representative" means either of the following:

(a) A duly appointed and acting guardian, executor, or administrator of the estate of a holder of title to land.

(b) A person duly authorized to act for, and on behalf of, a holder of title to land that is not a natural person.

SEC. 2. Section 34700 of the Water Code is amended to read:

34700. Each director shall be one of the following:

(a) A holder of title to land within the district.

(b) The legal representative of a holder of title to land within the district in accordance with Section 34030.

(c) A representative designated by a holder of title to land within the district, if the holder has filed with the district written evidence of that designation.

SEC. 3. Section 17 of the Drainage District Act of 1903 (Chapter 238 of the Statutes of 1903) is amended to read:

Sec. 17. (a) In each district organized as herein provided, an election shall be held on the first Tuesday after the first Monday in November of each odd-numbered year, at which shall be chosen a

successor to each director whose term of office shall expire in that month.

(b) If voting in the district is by resident registered voters, Section 7.5 shall apply.

(c) If voting in the district is by landowner voting based on assessed value, Section 7 shall apply. In a district in which the directors are elected by divisions, all owners of property within the division shall be entitled to vote and the number of votes which any property owner, in that division, shall be entitled to vote, shall be determined according to the assessed valuation of the property of the voter situated in that division, in the manner provided in Section 7.

(d) If the directors are elected at large in a landowner voting district, each qualified elector of the district may vote, for each director to be elected, as many votes as he or she may be entitled to vote in accordance with the assessed valuation of his or her property in the district.

(e) Prior to the last Friday of November following the general district election, each person elected a director shall qualify by taking and subscribing the official oath and executing an official bond in the sum of one thousand dollars ($1,000), which shall be approved by a judge of the superior court. The oath and bond shall be in the form prescribed by law for public officers, and shall be filed with the secretary of the board of directors. Each bond shall be recorded in the office of the county recorder of the county where the organization of the district was effected. If a vacancy occurs in the office of a director, the vacancy shall be filled pursuant to Section 1780 of the Government Code. The appointee shall qualify within 10 days after receiving notice of the appointment.

(f) If voting in the district is by landowner voting based on assessed value, each director shall be one of the following:

(1) A holder of title to land within the district.

(2) The legal representative of a holder of title to land within the district.

(3) A designated representative of a holder to title to land within the district, if the holder of title to land is not a natural person and the holder has filed with the district written evidence of the designation.

(g) If voting in the district is by landowner voting based on assessed value and if directors are elected by division, then, in addition to the requirements imposed by subdivision (f), each director shall also be a holder of title, a legal representative of a holder of title, or a designated representative of a holder of title, to land within the division from which the director is elected.

(h) If voting in the district is by resident registered voters, each director shall be a voter residing within the district if the directors are elected at large, and shall be a voter residing within the division from which the director is elected if directors are elected by division.

SEC. 4. Section 6 of Chapter 641 of the Statutes of 1931 is amended to read:

Sec. 6. (a) The districts shall be governed and managed by a board of five trustees, appointed by the board of supervisors, who shall hold office for four years and until the appointment and qualification of their successors. They shall receive no compensation but shall be allowed their necessary traveling and other expenses incurred in the performance of their duties.

(b) Each director shall be either of the following:

(1) A holder of title to land within the district and a resident of the district.

(2) A designated representative of a holder of title to land within the district, if the holder of title to land is not a natural person, the holder of title to land has filed with the district written evidence of that designation, and the designated representative is a resident of the district.

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

CHAPTER 289

An act to amend Sections 77122, 77191, and 77193 of, and to add Section 77031.5 to, the Food and Agricultural Code, relating to agricultural commissions.

[Approved by Governor August 12, 1998. Filed with Secretary of State August 13, 1998.]

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

SECTION 1. Section 77031.5 is added to the Food and Agricultural Code, to read:

77031.5. "Person" means any individual, partnership, limited liability partnership, corporation, limited liability company, or other association or entity doing business in California.

SEC. 2. Section 77122 of the Food and Agricultural Code is amended to read:

77122. In finding whether the commission is approved by producers during a referendum pursuant to this article or Article 8 (commencing with Section 77191), the vote of any nonprofit agricultural cooperative marketing association that is authorized by its members shall be considered as being the approval or rejection by the producers that are members of, or stockholders in, the nonprofit agricultural cooperative marketing association.

SEC. 3. Section 77191 of the Food and Agricultural Code is amended to read:

77191. This chapter shall become inoperative at the end of any marketing year in which targeted export assistance funds provided by the federal government have been permanently terminated, unless a referendum vote conducted among producers pursuant to the procedures described in Section 77193 approves the continuation of the commission. Funds are permanently terminated within the meaning of the previous sentence when the federal government does not provide targeted export assistance funds in two consecutive budget years.

SEC. 4. Section 77193 of the Food and Agricultural Code is amended to read:

77193. (a) Every six years, beginning in the 1992–93 marketing year, the secretary shall hold a hearing to determine whether operation of this chapter should be continued. If the secretary finds after the hearing that a substantial question exists among the producers assessed under this chapter regarding whether operation of this chapter should be continued, the secretary shall cause a referendum vote to be conducted among producers. If a referendum is required, the operation of this chapter shall continue if the secretary finds both of the following:

(1) A majority of producers voting in the referendum who are not affiliated with a cooperative handling walnuts voted in favor of the continuation of this chapter, and those so voting marketed a majority of the total quantity of walnuts marketed in the preceding marketing years by all such producers voting in the referendum.

(2) A majority of the producers voting in the referendum who are affiliated with a cooperative handling walnuts voted in favor of the continuation of this chapter, and those so voting marketed a majority of the total quantity of walnuts marketed in the preceding marketing year by all such producers voting in the referendum.

(b) If the secretary finds that a favorable vote has been given, the secretary shall so certify and this chapter shall remain in operation. If the secretary finds that a favorable vote has not been given, the secretary shall so certify and declare the operation of this chapter suspended upon expiration of the then current marketing year.

CHAPTER 290

An act to amend Section 704.080 of the Code of Civil Procedure, relating to debtor-creditor relations.

[Approved by Governor August 12, 1998. Filed with Secretary of State August 13, 1998.]

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

SECTION 1. Section 704.080 of the Code of Civil Procedure is amended to read:

704.080. (a) For the purposes of this section:

(1) "Deposit account" means a deposit account in which payments of public benefits or social security benefits are directly deposited by the government or its agent.

(2) "Social security benefits" means payments authorized by the Social Security Administration for regular retirement and survivors' benefits, supplemental security income benefits, coal miners' health benefits, and disability insurance benefits. "Public benefits" means aid payments authorized pursuant to subdivision (a) of Section 11450 of the Welfare and Institutions Code, payments for supportive services as described in Section 11323.2 of the Welfare and Institutions Code, and general assistance payments made pursuant to Section 17000.5 of the Welfare and Institutions Code.

(b) A deposit account is exempt without making a claim in the following amount:

(1) One thousand dollars ($1,000) where one depositor is the designated payee of the directly deposited public benefits payments, and two thousand dollars ($2,000) where one depositor is the designated payee of directly deposited social security payments.

(2) One thousand five hundred dollars ($1,500) where two or more depositors are the designated payees of the directly deposited public benefits payments, unless those depositors are joint payees of directly deposited payments that represent a benefit to only one of the depositors, in which case the exempt amount is one thousand dollars ($1,000). Three thousand dollars ($3,000) where two or more depositors are the designated payees of directly deposited social security payments, unless those depositors are joint payees of directly deposited payments that represent a benefit to only one of the depositors, in which case the exempt amount is two thousand dollars ($2,000).

(c) The amount of a deposit account that exceeds the exemption provided in subdivision (b) is exempt to the extent that it consists of payments of public benefits or social security benefits.

(d) Notwithstanding Article 5 (commencing with Section 701.010) of Chapter 3, when a deposit account is levied upon or otherwise sought to be subjected to the enforcement of a money

judgment, the financial institution that holds the deposit account shall either place the amount that exceeds the exemption provided in subdivision (b) in a suspense account or otherwise prohibit withdrawal of that amount pending notification of the failure of the judgment creditor to file the affidavit required by this section or the judicial determination of the exempt status of the amount. Within 10 business days after the levy, the financial institution shall provide the levying officer with a written notice stating (1) that the deposit account is one in which payments of public benefits or social security benefits are directly deposited by the government or its agent and (2) the balance of the deposit account that exceeds the exemption provided by subdivision (b). Promptly upon receipt of the notice, the levying officer shall serve the notice on the judgment creditor. Service shall be made personally or by mail.

(e) Notwithstanding the procedure prescribed in Article 2 (commencing with Section 703.510), whether there is an amount exempt under subdivision (c) shall be determined as follows:

(1) Within five days after the levying officer serves the notice on the judgment creditor under subdivision (d), a judgment creditor who desires to claim that the amount is not exempt shall file with the court an affidavit alleging that the amount is not exempt and file a copy with the levying officer. The affidavit shall be in the form of the notice of opposition provided by Section 703.560, and a hearing shall be set and held, and notice given, as provided by Sections 703.570 and 703.580. For the purpose of this subdivision, the "notice of opposition to the claim of exemption" in Sections 703.570 and 703.580 means the affidavit under this subdivision.

(2) If the judgment creditor does not file the affidavit with the levying officer and give notice of hearing pursuant to Section 703.570 within the time provided in paragraph (1), the levying officer shall release the deposit account and shall notify the financial institution.

(3) The affidavit constitutes the pleading of the judgment creditor, subject to the power of the court to permit amendments in the interest of justice. The affidavit is deemed controverted and no counteraffidavit is required.

(4) At a hearing under this subdivision, the judgment debtor has the burden of proving that the excess amount is exempt.

(5) At the conclusion of the hearing, the court by order shall determine whether or not the amount of the deposit account is exempt pursuant to subdivision (c) in whole or in part and shall make an appropriate order for its prompt disposition. No findings are required in a proceeding under this subdivision.

(6) Upon determining the exemption claim for the deposit account under subdivision (c), the court shall immediately transmit a certified copy of the order of the court to the financial institution and to the levying officer. If the order determines that all or part of the excess is exempt under subdivision (c), with respect to the amount of the excess which is exempt, the financial institution shall

transfer the exempt excess from the suspense account or otherwise release any restrictions on its withdrawal by the judgment debtor. The transfer or release shall be effected within three business days of the receipt of the certified copy of the court order by the financial institution.

(f) If the judgment debtor claims that a portion of the amount is exempt other than pursuant to subdivision (c), the claim of exemption shall be made pursuant to Article 2 (commencing with Section 703.510). If the judgment debtor also opposes the judgment creditor's affidavit regarding an amount exempt pursuant to subdivision (c), both exemptions shall be determined at the same hearing, provided the judgment debtor has complied with Article 2 (commencing with Section 703.510).

SEC. 2. This act shall become operative on January 1, 2000.

CHAPTER 291

An act to amend Sections 14016.5, 14087.305, and 14089 of the Welfare and Institutions Code, relating to human services.

[Approved by Governor August 12, 1998. Filed with Secretary of State August 13, 1998.]

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

SECTION 1. Section 14016.5 of the Welfare and Institutions Code is amended to read:

14016.5. (a) At the time of determining or redetermining the eligibility of a Medi-Cal or Aid to Families with Dependent Children (AFDC) applicant or beneficiary who resides in an area served by a managed health care plan or pilot program in which beneficiaries may enroll, each applicant or beneficiary shall personally attend a presentation at which the applicant or beneficiary is informed of the managed care and fee-for-service options available regarding methods of receiving Medi-Cal benefits. The county shall ensure that each beneficiary or applicant attends this presentation.

(b) The health care options presentation described in subdivision (a) shall include all of the following elements:

(1) Each beneficiary or eligible applicant shall be informed that he or she may choose to continue an established patient-provider relationship in the fee-for-service sector.

(2) Each beneficiary or eligible applicant shall be provided with the name, address, telephone number, and specialty, if any of each primary care provider, and each clinic participating in each prepaid managed health care plan, pilot project, or fee-for-service case management provider option. This information shall be provided under geographic area designations, in alphabetical order by the

name of the primary care provider and clinic. The name, address, and telephone number of each specialist participating in each prepaid managed care health plan, pilot project, or fee-for-service case management provider option shall be made available by either contacting the health care options contractor or the prepaid managed care health plan, pilot project, or fee-for-service case management provider.

(3) Each beneficiary or eligible applicant shall be informed that he or she may choose to continue an established patient-provider relationship in a managed care option, if his or her treating provider is a primary care provider or clinic contracting with any of the prepaid managed health care plans, pilot projects, or fee-for-service case management provider options available, has available capacity, and agrees to continue to treat that beneficiary or applicant.

(4) In areas specified by the director, each beneficiary or eligible applicant shall be informed that if he or she fails to make a choice, or does not certify that he or she has an established relationship with a primary care provider or clinic, he or she shall be assigned to, and enrolled in, a prepaid managed health care plan, pilot projects, or fee-for-service case management provider.

(c) No later than 30 days following the date a Medi-Cal or AFDC beneficiary or applicant is determined eligible, the beneficiary or applicant shall indicate his or her choice in writing, as a condition of coverage for Medi-Cal benefits, of either of the following health care options:

(1) To obtain benefits by receiving a Medi-Cal card, which may be used to obtain services from individual providers, that the beneficiary would locate, who choose to provide services to Medi-Cal beneficiaries.

The department may require each beneficiary or eligible applicant, as a condition for electing this option, to sign a statement certifying that he or she has an established patient-provider relationship, or in the case of a dependent, the parent or guardian shall make that certification. This certification shall not require the acknowledgment or guarantee of acceptance, by any indicated Medi-Cal provider or health facility, of any beneficiary making a certification under this section.

(2) (A) To obtain benefits by enrolling in a prepaid managed health care plan, pilot program, or fee-for-service case management provider that has agreed to make Medi-Cal services readily available to enrolled Medi-Cal beneficiaries.

(B) At the time the beneficiary or eligible applicant selects a prepaid managed health care plan, pilot project, or fee-for-service case management provider, the department shall, when applicable, encourage the beneficiary or eligible applicant to also indicate, in writing, his or her choice of primary care provider or clinic contracting with the selected prepaid managed health care plan, pilot project, or fee-for-service case management provider.

(d) (1) In areas specified by the director, a Medi-Cal or AFDC beneficiary or eligible applicant who does not make a choice, or who does not certify that he or she has an established relationship with a primary care provider or clinic shall be assigned to and enrolled in an appropriate Medi-Cal managed care plan, pilot project, or fee-for-service case management provider providing service within the area in which the beneficiary resides.

(2) If it is not possible to enroll the beneficiary under a Medi-Cal managed care plan or pilot project or a fee-for-service case management provider because of a lack of capacity or availability of participating contractors, the beneficiary shall be provided with a Medi-Cal card and informed about fee-for-service primary care providers who do all of the following:

(A) The providers agree to accept Medi-Cal patients.

(B) The providers provide information about the provider's willingness to accept Medi-Cal patients as described in Section 14016.6.

(C) The providers provide services within the area in which the beneficiary resides.

(e) If a beneficiary or eligible applicant does not choose a primary care provider or clinic or does not select any primary care provider who is available, the managed health care plan, pilot project, or fee-for-service case management provider that was selected by or assigned to the beneficiary shall ensure that the beneficiary selects a primary care provider or clinic within 30 days after enrollment or is assigned to a primary care provider within 40 days after enrollment.

(f) (1) The managed care plan shall have a valid Medi-Cal contract, adequate capacity, and appropriate staffing to provide health care services to the beneficiary.

(2) The department shall establish standards for all of the following:

(A) The maximum distances a beneficiary is required to travel to obtain primary care services from the managed care plan, fee-for-service managed care provider, or pilot project in which the beneficiary is enrolled.

(B) The conditions under which a primary care service site shall be accessible by public transportation.

(C) The conditions under which a managed care plan, fee-for-service managed care provider, or pilot project shall provide nonmedical transportation to a primary care service site.

(3) In developing the standards required by paragraph (2), the department shall take into account, on a geographic basis, the means of transportation used and distances typically traveled by Medi-Cal beneficiaries to obtain fee-for-service primary care services and the experience of managed care plans in delivering services to Medi-Cal enrollees. The department shall also consider the provider's ability to render culturally and linguistically appropriate services.

(g) To the extent possible, the arrangements for carrying out subdivision (d) shall provide for the equitable distribution of Medi-Cal beneficiaries among participating managed care plans, fee-for-service case management providers, and pilot projects.

(h) If, under the provisions of subdivision (d), a Medi-Cal beneficiary or applicant does not make a choice or does not certify that he or she has an established relationship with a primary care provider or clinic, the person may, at the option of the department, be provided with a Medi-Cal card or be assigned to and enrolled in a managed care plan providing service within the area in which the beneficiary resides.

(i) Any Medi-Cal or AFDC beneficiary who is dissatisfied with the provider or managed care plan, pilot project, or fee-for-service case management provider shall be allowed to select or be assigned to another provider or managed care plan, pilot project, or fee-for-service case management provider.

(j) The department or its contractor shall notify a managed care plan, pilot project, or fee-for-service case management provider when it has been selected by or assigned to a beneficiary. The managed care plan, pilot project, or fee-for-service case management provider that has been selected by, or assigned to, a beneficiary, shall notify the primary care provider or clinic than it has been selected or assigned. The managed care plan, pilot project, or fee-for-service case management provider shall also notify the beneficiary of the managed care plan, pilot project, or fee-for-service case management provider or clinic selected or assigned.

(k) (1) The department shall ensure that Medi-Cal beneficiaries eligible under Title XVI of the Social Security Act are provided with information about options available regarding methods of receiving Medi-Cal benefits as described in subdivision (c).

(2) (A) The director may waive the requirements of subdivisions (c) and (d) until a means is established to directly provide the presentation described in subdivision (a) to beneficiaries who are eligible for the federal Supplemental Security Income for the Aged, Blind, and Disabled Program (Subchapter 16 (commencing with Section 1381) of Chapter 7 of Title 42 of the United States Code).

(B) The director may elect not to apply the requirements of subdivisions (c) and (d) to beneficiaries whose eligibility under the Supplemental Security Income program is established before January 1, 1994.

(*l*) In areas where there is no prepaid managed health care plan or pilot program which has contracted with the department to provide services to Medi-Cal beneficiaries, and where no other enrollment requirements have been established by the department, no explicit choice need be made, and the beneficiary or eligible applicant shall receive a Medi-Cal card.

(m) The following definitions contained in this subdivision shall control the construction of this section, unless the context requires otherwise:

(1) "Applicant," "beneficiary," and "eligible applicant," in the case of a family group, means any person with legal authority to make a choice on behalf of dependent family members.

(2) "Fee-for-service case management provider" means a provider enrolled and certified to participate in the Medi-Cal fee-for-service case management program the department may elect to develop in selected areas of the state with the assistance of and in cooperation with California physician providers and other interested provider groups.

(3) "Managed health care plan" and "managed care plan" mean a person or entity operating under a Medi-Cal contract with the department under this chapter or Chapter 8 (commencing with Section 14200) to provide, or arrange for, health care services for Medi-Cal beneficiaries as an alternative to the Medi-Cal fee-for-service program that has a contractual responsibility to manage health care provided to Medi-Cal beneficiaries covered by the contract.

(n) This section shall be implemented in a manner consistent with any federal waiver required to be obtained by the department in order to implement this section.

SEC. 2. Section 14087.305 of the Welfare and Institutions Code is amended to read:

14087.305. (a) In areas specified by the director for expansion of the Medi-Cal managed care program under Section 14087.3 and where the department is contracting with a prepaid health plan that is contracting with, governed, owned or operated by a county board of supervisors, a county special commission or county health authority authorized by Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.96, a Medi-Cal or Aid to Families with Dependent Children (AFDC) applicant or beneficiary shall be informed of the managed care options available regarding methods of receiving Medi-Cal benefits. The county shall ensure that each beneficiary is informed of these options and informed that a health care options presentation is available.

(b) The managed care options information described in subdivision (a) shall include the following elements:

(1) Each beneficiary or eligible applicant shall be provided with the name, address, telephone number, and specialty, if any, of each primary care provider, by specialty, or clinic, participating in each prepaid health plan option. This information shall be presented under geographic area designations, in alphabetical order by the name of the primary care provider and clinic. The name, address, and telephone number of each specialist participating in each prepaid health plan shall be made available by contacting the health care options contractor or the prepaid health plan.

(2) Each beneficiary or eligible applicant shall be informed that he or she may choose to continue an established patient-provider relationship in a managed care option, if his or her treating provider is a primary care provider or clinic contracting with any of the prepaid health plan options available and has available capacity and agrees to continue to treat that beneficiary or applicant.

(3) Each beneficiary or eligible applicant shall be informed that if he or she fails to make a choice, he or she shall be assigned to, and enrolled in, a prepaid health plan.

(c) No later than 30 days following the date a Medi-Cal or AFDC beneficiary or applicant is determined eligible for Medi-Cal, the beneficiary shall indicate his or her choice, in writing, from among the available prepaid health plans in the region and his or her choice of primary care provider or clinic contracting with the selected prepaid health plan.

(d) At the time the beneficiary or eligible applicant selects a prepaid health plan, the department shall, when applicable, encourage the beneficiary or eligible applicant to also indicate, in writing, his or her choice of primary care provider or clinic contracting with the selected prepaid health plan.

(e) In areas specified by the director for expansion of the Medi-Cal managed care program under Section 14087.3, and where the department is contracting with a prepaid health plan that is contracting with, governed, owned or operated by a county board of supervisors, a county special commission or county health authority authorized by Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.96, a Medi-Cal or AFDC beneficiary who does not make a choice of managed care plans, shall be assigned to and enrolled in an appropriate Medi-Cal prepaid health plan providing service within the area in which the beneficiary resides.

(f) If a beneficiary or eligible applicant does not choose a primary care provider or clinic, or does not select any primary care provider who is available, the prepaid health plan that was selected by or assigned to the beneficiary shall ensure that the beneficiary selects a primary care provider or clinic within 30 days after enrollment or is assigned to a primary care provider within 40 days after enrollment.

(g) Any Medi-Cal or AFDC beneficiary dissatisfied with the primary care provider or prepaid health plan shall be allowed to select or be assigned to another primary care provider within the same prepaid health plan. In addition, the beneficiary shall be allowed to select or be assigned to another prepaid health plan contracted for pursuant to this article that is in effect for the geographic area in which he or she resides, in accordance with Section 1903 (m) (2) (F) (ii) of the Social Security Act.

(h) The department or its contractor shall notify a prepaid health plan when it has been selected by or assigned to a beneficiary. The prepaid health plan that has been selected by or assigned to a

beneficiary shall notify the primary care provider that has been selected or assigned. The prepaid health plan shall also notify the beneficiary of the prepaid health plan and primary care provider or clinic selected or assigned.

(i) (1) The managed health care plan shall have a valid Medi-Cal contract, adequate capacity, and appropriate staffing to provide health care services to the beneficiary.

(2) The department shall establish standards for all of the following:

(A) The maximum distances a beneficiary is required to travel to obtain primary care services from the managed care plan, in which the beneficiary is enrolled.

(B) The conditions under which a primary care service site shall be accessible by public transportation.

(C) The conditions under which a managed care plan shall provide nonmedical transportation to a primary care service site.

(3) In developing the standards required by paragraph (2) the department shall take into account, on a geographic basis, the means of transportation used and distances typically traveled by Medi-Cal beneficiaries to obtain fee-for-service primary care services and the experience of managed care plans in delivering services to Medi-Cal enrollees. The department shall also consider the provider's ability to render culturally and linguistically appropriate services.

(j) To the extent possible, the arrangements for carrying out subdivision (e) shall provide for the equitable distribution of Medi-Cal beneficiaries among participating prepaid health plans, or managed care plans.

(k) This section shall be implemented in a manner consistent with any federal waiver required to be obtained by the department in order to implement this section.

SEC. 3. Section 14089 of the Welfare and Institutions Code is amended to read:

14089. (a) The purpose of this article is to provide a comprehensive program of managed health care plan services to Medi-Cal recipients residing in clearly defined geographical areas. It is, further, the purpose of this article to create maximum accessibility to health care services by permitting Medi-Cal recipients the option of choosing from among two or more managed health care plans or fee-for-service managed case arrangements, including, but not limited to, health maintenance organizations, prepaid health plans, primary care case management plans. Independent practice associations, health insurance carriers, private foundations, and university medical centers systems, not-for-profit clinics, and other primary care providers, may be offered as choices to Medi-Cal recipients under this article if they are organized and operated as managed care plans, for the provision of preventive managed health care plan services.

(b) The negotiator may seek proposals and then shall contract based on relative costs, extent of coverage offered, quality of health services to be provided, financial stability of the health care plan or carrier, recipient access to services, cost-containment strategies, peer and community participation in quality control, emphasis on preventive and managed health care services and the ability of the health plan to meet all requirements for both of the following:

(1) Certification, where legally required, by the Commissioner of Corporations and the Insurance Commissioner.

(2) Compliance with all of the following:

(A) The health plan shall satisfy all applicable state and federal legal requirements for participation as a Medi-Cal managed care contractor.

(B) The health plan shall meet any standards established by the department for the implementation of this article.

(C) The health plan receives the approval of the department to participate in the pilot project under this article.

(c) (1) (A) The proposals shall be for the provision of preventive and managed health care services to specified eligible populations on a capitated, prepaid or postpayment basis.

(B) Enrollment in a Medi-Cal managed health care plan under this article shall be voluntary for beneficiaries eligible for the federal Supplemental Security Income for the Aged, Blind, and Disabled Program (Subchapter 16 (commencing with Section 1381) of Chapter 7 of Title 42 of the United States Code).

(2) The cost of each program established under this section shall not exceed the total amount which the department estimates it would pay for all services and requirements within the same geographic area under the fee-for-service Medi-Cal program.

(d) The department shall enter into contracts pursuant to this article, and shall be bound by the rates, terms, and conditions negotiated by the negotiator.

(e) (1) An eligible beneficiary shall be entitled to enroll in any health care plan contracted for pursuant to this article that is in effect for the geographic area in which he or she resides. Enrollment shall be for a minimum of six months. Contracts entered into pursuant to this article shall be for at least one but no more than three years. The director shall make available to recipients information summarizing the benefits and limitations of each health care plan available pursuant to this section in the geographic area in which the recipient resides.

(2) No later than 30 days following the date a Medi-Cal or AFDC recipient is informed of the health care options described in paragraph (1) of subdivision (e), the recipient shall indicate his or her choice in writing of one of the available health care plans and his or her choice of primary care provider or clinic contracting with the selected health care plan.

(3) The health care options information described in paragraph (1) of subdivision (e) shall include the following elements:

(A) Each beneficiary or eligible applicant shall be provided with the name, address, telephone number, and specialty, if any of each primary care provider, and each clinic participating in each health care plan. This information shall be presented under geographic area designations in alphabetical order by the name of the primary care provider and clinic. The name, address, and telephone number of each specialist participating in each health care plan shall be made available by contacting the health care options contractor or the health care plan.

(B) Each beneficiary or eligible applicant shall be informed that he or she may choose to continue an established patient-provider relationship in a managed care option, if his or her treating provider is a primary care provider or clinic contracting with any of the health plans available and has the available capacity and agrees to continue to treat that beneficiary or eligible applicant.

(C) Each beneficiary or eligible applicant shall be informed that if he or she fails to make a choice, he or she shall be assigned to, and enrolled in, a health care plan.

(4) At the time the beneficiary or eligible applicant selects a health care plan, the department shall, when applicable, encourage the beneficiary or eligible applicant to also indicate, in writing, his or her choice of primary care provider or clinic contracting with the selected health care plan.

(5) Commencing with the implementation of a geographic managed care project in a designated county, a Medi-Cal or AFDC beneficiary who does not make a choice of health care plans in accordance with paragraph (2), shall be assigned to and enrolled in an appropriate health care plan providing service within the area in which the beneficiary resides.

(6) If a beneficiary or eligible applicant does not choose a primary care provider or clinic, or does not select any primary care provider who is available, the health care plan selected by or assigned to the beneficiary shall ensure that the beneficiary selects a primary care provider or clinic within 30 days after enrollment or is assigned to a primary care provider within 40 days after enrollment.

(7) Any Medi-Cal or AFDC beneficiary dissatisfied with the primary care provider or health care plan shall be allowed to select or be assigned to another primary care provider within the same health care plan. In addition, the beneficiary shall be allowed to select or be assigned to another health care plan contracted for pursuant to this article that is in effect for the geographic area in which he or she resides in accordance with Section 1903(m)(2)(F)(ii) of the Social Security Act.

(8) The department or its contractor shall notify a health care plan when it has been selected by or assigned to a beneficiary. The health care plan that has been selected or assigned by a beneficiary shall

notify the primary care provider that has been selected or assigned. The health care plan shall also notify the beneficiary of the health care plan and primary care provider selected or assigned.

(9) This section shall be implemented in a manner consistent with any federal waiver that is required to be obtained by the department to implement this section.

(f) A participating county may include within the plan or plans providing coverage pursuant to this section, employees of county government, and others who reside in the geographic area and who depend upon county funds for all or part of their health care costs.

(g) The negotiator and the department shall establish pilot projects to test the cost-effectiveness of delivering benefits as defined in subdivisions (a) through (f).

(h) The California Medical Assistance Commission shall evaluate the cost-effectiveness of these pilot projects after one year of implementation. Pursuant to this evaluation the commission may either terminate or retain the existing pilot projects.

(i) Funds may be provided to prospective contractors to assist in the design, development, and installation of appropriate programs. The award of these funds shall be based on criteria established by the department.

(j) In implementing this article, the department may enter into contracts for the provision of essential administrative and other services. Contracts entered into under this subdivision may be on a noncompetitive bid basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code. These contracts shall have no force and effect unless approved by the Department of Finance.

CHAPTER 292

An act to amend Section 30163 of the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 12, 1998. Filed with Secretary of State August 13, 1998.]

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

SECTION 1. The Legislature hereby finds and declares:

(a) California is in agreement with the policies and Congressional intent enacted as part of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. Sec. 1331 and following), including the goal to do all of the following:

(1) Adequately inform the public about any adverse health effects of cigarette smoking by inclusion of warning notices on each package of cigarettes.

(2) Not impede commerce and the national economy by diverse, nonuniform, and confusing cigarette labeling and advertising regulations with respect to any relationship between smoking and health.

(3) Provide a strategy for making Americans more aware of any adverse health effects of smoking.

(4) Assure the timely widespread dissemination of research findings.

(5) Enable individuals to make informed decisions about smoking.

(b) It is the intent of the Legislature to align state law with federal policy and regulations. In so doing, it is necessary to clarify that a product manufactured and labeled for export or for consumption outside of the United States becomes an import if sold within California, and, thus, must comply with state and federal tax laws and the Federal Cigarette Labeling and Advertising Act (15 U.S.C. Sec. 1331 and following). Modification or alteration of packaging to conceal the original packaging by the manufacturer is prohibited.

SEC. 2. Section 30163 of the Revenue and Taxation Code is amended to read:

30163. Except as otherwise provided in this section, an appropriate stamp shall be affixed to, or an appropriate meter impression shall be made on each package of cigarettes prior to the distribution of the cigarettes. No stamp or meter impression may be affixed to, or made upon, any package of cigarettes unless that package complies with all requirements of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. Sec. 1331 and following) for the placement of labels, warnings, or any other information upon a package of cigarettes that is to be sold within the United States. Pursuant to its authority under Section 30148, the board shall revoke the license issued to a distributor that is determined to be in violation of 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 that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, 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 secure compliance with federal laws and regulations pertaining to the labeling of cigarettes manufactured in the United States and distributed in California, it is necessary that this act take effect immediately.

CHAPTER 293

An act to amend Sections 18015.5, 18020, 18020.5, 18025, 18025.5, 18026, 18027.3, 18029, 18029.5, 18030, and 18604 of the Health and Safety Code, relating to recreational vehicles.

[Approved by Governor August 12, 1998. Filed with Secretary of State August 13, 1998.]

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

SECTION 1. Section 18015.5 of the Health and Safety Code is amended to read:

18015.5. The provisions of Chapter 4 (commencing with Section 18025), applicable to manufactured homes and mobilehomes, shall also apply to commercial coaches, except that reasonable variations in standards for commercial coaches shall be established by regulations if the department determines these variations will not endanger public health, welfare, or safety.

SEC. 2. Section 18020 of the Health and Safety Code is amended to read:

18020. (a) Except for the provisions in Section 18027.3, and except as provided by the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Sec. 5401, et seq.), as it applies to the manufacture of new manufactured housing, the department shall enforce this part and the rules and regulations adopted pursuant to this part.

(b) The department may, at the department's sole option, enforce Chapter 4 (commencing with Section 18025) and the rules and regulations adopted pursuant to that Chapter 4 through department-approved third-party entities. The department shall adopt regulations for the approval of third-party entities, including, but not limited to, all of the following criteria:

(1) Freedom from any conflict of interest.

(2) Qualifications of personnel.

(3) Frequency of inspections or monitorings of manufacturer quality control.

(4) Involvement in collusive or fraudulent actions related to the performance of activities required by Section 18013.2.

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

(c) The department may require rotation of third-party entities performing inspection services for any manufacturing facility within the state to prevent the third-party entity from either performing within the same facility for more than 365 calendar days or performing inspections for any facility when the third-party entity performed inspection services within the previous 365 calendar days.

(d) The department shall monitor the performance of third-party entities approved pursuant to subdivision (b) and shall require periodic reports in writing containing information that the department may reasonably require to determine compliance with the conditions of the department's approval.

(1) When the department receives information about an alleged inadequacy in the performance of a third-party entity, including any involvement in collusive or fraudulent actions related to the performance of activities required by Section 18013.2, it shall consider the information in its monitoring efforts and make a determination about the validity of the alleged inadequacy in a timely manner.

(2) When the department determines, either through its monitoring efforts or through information provided by any other person, that an approved third-party entity has failed to perform according to the conditions of approval, the department may withdraw approval by forwarding written notice to the approved third-party entity by registered mail to its address of record, briefly summarizing the cause for the department's decision.

(3) A third-party entity, upon having its approval withdrawn by the department, may request a hearing before the director of the department. The request for hearing shall be in writing and either delivered or postmarked prior to midnight on the 10th calendar day from the date of the department's notice.

(4) The department, upon timely receipt of a written request for hearing, shall, within 30 calendar days, schedule a hearing before the director or his or her agent. All hearings pursuant to this subdivision shall be held in the department's Sacramento offices and the decision of the director shall be final.

(5) A third-party entity whose approval has been withdrawn by the department shall not be permitted to reapply for the department's approval pursuant to subdivision (b) for a period of one year from the date that the approval was withdrawn by the department.

(6) A third-party entity whose approval has been withdrawn more than once by the department shall not be permitted to reapply for department approval pursuant to subdivision (b) for a period of not less than one year from the date that the department's approval was last withdrawn.

(7) No third-party entity shall perform the activities required by Section 18013.2 unless it has the approval of the department.

(e) (1) Upon finding a violation of subdivision (b) on the part of a third-party entity, the director shall issue citations and levy administrative fines. Each citation and fine assessment shall be in writing and describe the particulars for the citation. The citation and fine assessment shall be issued not later than six months after discovery of the violation.

(2) The fine for the first violation shall be at least five hundred dollars ($500) and shall not exceed one thousand dollars ($1,000). The fine for the second violation shall be at least two thousand dollars ($2,000) and not exceed four thousand dollars ($4,000). The fine for the third violation shall be at least five thousand dollars ($5,000), and shall not exceed ten thousand dollars ($10,000). The fines shall be assessed for each day the violation occurs. If a third-party entity has been cited more than three times during a 365-day period, the approval to conduct inspections on behalf of the department shall be suspended for a minimum of one year.

(3) The third-party entity may request an administrative hearing on the citation or fine. If the party fails to request a hearing within 30 days, and does not pay the fine, the approval to perform inspections shall be automatically revoked, until the time that the department finds that the circumstances which led to the citation have been corrected and the fines have been paid.

(4) Upon review of the findings from the administrative hearing, the director may modify, rescind, or uphold the citation and fine assessment. The decision of the director shall be served by regular mail.

(5) The fines shall be paid into the Housing and Community Development Fund, which is hereby created in the State Treasury, and shall be used, when appropriated by the Legislature, to offset the department's costs to administer this part.

(f) The remedies provided in this part to any aggrieved party are not exclusive and shall not preclude the applicability of any other provision of law.

SEC. 3. Section 18020.5 of the Health and Safety Code is amended to read:

18020.5. (a) Any person who knowingly violates any provision of this part or any rule or regulation issued pursuant to this part, except for a violation of any federal manufactured home or mobilehome construction and safety standard for which a penalty is provided in Section 18021, is guilty of a misdemeanor, punishable by a fine not exceeding two thousand dollars ($2,000), by imprisonment not exceeding 30 days, or by both.

(b) Notwithstanding Section 801 of the Penal Code, the one-year period for filing an indictment or an information or complaint with respect to any misdemeanor in subdivision (a) by a licensee in the first sale or lease of any manufactured home, mobilehome, or

commercial coach to a consumer shall commence on the date that the manufactured home, mobilehome, or commercial coach is delivered to the consumer.

SEC. 4. Section 18025 of the Health and Safety Code is amended to read:

18025. (a) Except as provided in subdivisions (b), (c), and (d), it is unlawful for any person to sell, offer for sale, rent, or lease within this state, any manufactured home or any mobilehome, commercial coach, or special purpose commercial coach manufactured after September 1, 1958, containing structural, fire safety, plumbing, heat-producing, or electrical systems and equipment unless the systems and equipment meet the requirements of the department for those systems and equipment and the installation of them. The department may adopt those rules and regulations which shall be reasonably consistent with recognized and accepted principles for structural, fire safety, plumbing, heat-producing, and electrical systems and equipment and installations, respectively, in order to protect the health and safety of the people of this state from dangers inherent in the use of substandard and unsafe structural, fire safety, plumbing, heat-producing, and electrical equipment and installations.

(b) All manufactured homes and mobilehomes manufactured on or after June 15, 1976, shall comply with the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Sec. 5401 et seq.).

(c) The sale of used manufactured homes and mobilehomes by a dealer licensed pursuant to this part shall be subject to Section 18046.

(d) The sale of used manufactured homes and mobilehomes by a real estate broker or salesperson licensed under Division 4 (commencing with Section 10000) of the Business and Professions Code shall be subject to Section 2079 of the Civil Code.

SEC. 4.5. Section 18025 of the Health and Safety Code is amended to read:

18025. (a) Except as provided in subdivisions (b) and (c), it is unlawful for any person to sell, offer for sale, rent, or lease within this state, any manufactured home or any mobilehome, commercial coach, or special purpose commercial coach manufactured after September 1, 1958, containing structural, fire safety, plumbing, heat-producing, or electrical systems and equipment unless the systems and equipment meet the requirements of the department for those systems and equipment and the installation of them. The department may adopt those rules and regulations which shall be reasonably consistent with recognized and accepted principles for structural, fire safety, plumbing, heat-producing, and electrical systems and equipment and installations, respectively, in order to protect the health and safety of the people of this state from dangers inherent in the use of substandard and unsafe structural, fire safety,

plumbing, heat-producing, and electrical equipment and installations.

(b) All manufactured homes and mobilehomes manufactured on or after June 15, 1976, shall comply with the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Sec. 5401 et seq.).

(c) The sale of used manufactured homes and mobilehomes by an agent shall be subject to Section 18046.

SEC. 5. Section 18025.5 of the Health and Safety Code is amended to read:

18025.5. (a) Pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Sec. 5401 et seq.), the department may assume responsibility for the enforcement of manufactured home and mobilehome construction and safety standards relating to any issue with respect to which a federal standard has been established. The department may adopt regulations to ensure acceptance by the Secretary of Housing and Urban Development of California's plan for the administration and enforcement of federal manufactured home and mobilehome safety and construction standards.

(b) The department may conduct inspections and investigations that it determines may be necessary to secure enforcement of this part and regulations adopted pursuant to this part.

(c) Subdivision (b) shall not apply to the enforcement of Section 18027.3 unless the department determines there is a compelling reason to exercise oversight in the inspection of recreational vehicles or park trailers at a factory, in which case the department may investigate the inspection, or conduct a department inspection, on recreational vehicles or park trailers at a factory and utilize any means necessary to collect a fee on the manufacturer for the cost of the department investigation or inspection.

(d) For the purposes of enforcement of this part and the related regulations, persons duly designated by the director of the department, upon presenting appropriate credentials to the owner, operator, or agent in charge, may do both of the following:

(1) Enter, at any reasonable times and without advance notice, any factory, warehouse, sales lot, or establishment in which manufactured homes, mobilehomes, commercial coaches, or special purpose commercial coaches are manufactured, stored, held for sale, sold, or offered for sale, rent, or lease.

(2) Inspect, at reasonable times and within reasonable limits and in a reasonable manner, any factory, warehouse, sales lot, or establishment, and inspect the books, papers, records, and documents to ensure compliance with this part.

SEC. 6. Section 18026 of the Health and Safety Code is amended to read:

18026. (a) All manufactured homes, mobilehomes, commercial coaches, and special purpose commercial coaches manufactured on

or after September 1, 1958, that are sold, offered for sale, rented, or leased within this state shall bear a federal label or an insignia of approval issued by the department, whichever is appropriate, to indicate compliance with the regulations of the department adopted pursuant to this part, which were in effect on the date of manufacture of the manufactured home, mobilehome, commercial coach, or special purpose commercial coach.

(b) The department may issue insignia for manufactured homes, mobilehomes, commercial coaches, or special purpose commercial coaches manufactured prior to the effective dates of the appropriate regulations that meet the requirements of reasonable standards of health and safety as set forth in this part or the regulations adopted pursuant to this part in effect at the time of that issue.

(c) It is unlawful for any person to remove, or cause to be removed, an insignia of approval affixed pursuant to this section without prior authorization by the department.

SEC. 7. Section 18027.3 of the Health and Safety Code is amended to read:

18027.3. (a) The Legislature finds and declares as follows:

(1) The American National Standards Institute (ANSI) has adopted standards for the design and safety of recreational vehicles, including park trailers, pursuant to procedures that have given diverse views an opportunity to be considered and which indicate that interested and affected parties have reached substantial agreement on their adoption.

(2) The ANSI A119.2 and A119.5 standards are designed to protect the health and safety of persons using recreational vehicles and park trailers.

(3) Compliance with those standards as required by this section may be enforced by any law enforcement authority having appropriate jurisdiction, pursuant to Section 18020.5, which makes it a crime to violate any provision of this part. Therefore, to promote governmental efficiency and economy and to avoid duplication of activities and services, it is appropriate to eliminate the role of the department in modifying and enforcing standards for the construction of recreational vehicles.

(b) Recreational vehicles specified in subdivision (a) of Section 18010 that are manufactured on or after January 1, 1999, shall be constructed in accordance with Standard No. A119.2, as contained in the 1996 edition of the Standards of the American National Standards Institute.

(c) Recreational vehicles specified in subdivision (b) of Section 18010 that are manufactured on or after January 1, 1999, shall be constructed in accordance with Standard No. A119.5, as contained in the 1998 edition of the Standards of the American National Standards Institute.

(d) A change in Standard No. A119.2 or A119.5 contained in a new edition of the Standards of the American National Standards Institute

shall become operative on the 180th day following the publication date.

(e) No recreational vehicle shall be equipped with more than one electrical power supply cord.

(f) Any recreational vehicle manufactured on or after January 1, 1999, that is offered for sale, sold, rented, or leased within this state shall bear a label or an insignia indicating the manufacturer's compliance with the American National Standards Institute standard specified in subdivision (b) or (c).

(g) Any recreational vehicle manufactured prior to January 1, 1999, that is offered for sale, sold, rented, or leased within this state shall bear a label or an insignia of approval indicating the manufacturer's compliance with the American National Standards Institute standard or a department insignia issued prior to January 1, 1999, indicating compliance with the state standard that was in effect pursuant to this chapter on the date of manufacture, including any modifications contained in regulations.

(h) It is unlawful for any person to do either of the following:

(1) Remove, or cause to be removed, a label, an insignia, or an insignia of approval affixed pursuant to this section.

(2) Alter or convert, or cause to be altered or converted, any recreational vehicle in a manner that is inconsistent with ANSI Standard No. A119.2 or A119.5 when the recreational vehicle is used, occupied, sold, or offered for sale within this state.

SEC. 8. Section 18029 of the Health and Safety Code is amended to read:

18029. It is unlawful for any person to alter or convert, or cause to be altered or converted, the structural, fire safety, plumbing, heat-producing, or electrical systems and installations or equipment of a manufactured home, mobilehome, special purpose commercial coach, or commercial coach that bears a department insignia of approval or federal label when the manufactured home, mobilehome, special purpose commercial coach, or commercial coach is used, occupied, sold, or offered for sale within this state, unless its performance as altered or converted is in compliance with regulations adopted by the department. The department may adopt regulations providing requirements for alterations and conversions described in this section.

SEC. 9. Section 18029.5 of the Health and Safety Code is amended to read:

18029.5. (a) The department may adopt rules and regulations, which it determines to be reasonably consistent with generally recognized fire protection standards, governing conditions relating to the prevention of fire or for the protection of life and property against fire in manufactured homes, mobilehomes, special purpose commercial coaches, and commercial coaches. All manufactured homes and mobilehomes manufactured on or after June 15, 1976, shall

comply with the National Manufactured Housing Construction and Safety Act of 1974 (42 U.S.C. Sec. 5401, et seq.).

(b) The chief fire official of every city, county, city and county, fire protection district, or other local fire protection agency shall file a report on each manufactured home and mobilehome fire occurring within his or her jurisdiction with the State Fire Marshal. The report shall be made on forms provided by the State Fire Marshal.

(c) The State Fire Marshal shall annually compile a statistical report on all manufactured home and mobilehome fires occurring within this state and shall furnish the department with a copy of the report. The annual report shall include, but need not be limited to, the number of manufactured home and mobilehome fires, the causes of the fires, the monetary loss, and any casualties or fatalities resulting from the fires.

SEC. 10. Section 18030 of the Health and Safety Code is amended to read:

18030. (a) If the department determines that standards for commercial coaches and special purpose commercial coaches prescribed by the statutes or regulations of another state are at least equal to the standards prescribed by the department, the department may so provide by regulation. Thereafter, any commercial coaches or special purpose commercial coaches which that other state has approved as meeting its standards shall be deemed to meet the standards of the department, if the department determines that the standards of the other state are actually being enforced.

(b) In lieu of the procedure set forth in subdivision (a), the department may contract with approved third-party entities for enforcement of the applicable provisions of this part for commercial coaches or special purpose commercial coaches manufactured outside this state for sale within this state. Third-party entities may apply to the department for enforcement authority pursuant to this subdivision by providing evidence to the satisfaction of the department that they satisfy all of the following criteria:

(1) They are independent and free from conflict of interest, have the ability to enforce this part, and shall enforce this part without an actual conflict of interest or any appearance of a conflict of interest.

(2) They are adequately staffed with qualified personnel who can, and shall, implement all provisions of the contract, including monitoring, reporting, and enforcement.

(3) They have the authority, through contract or otherwise, and the ability to obtain correction of defects detected or reported as a result of their enforcement activities.

(4) They meet any other conditions of operation that the department may reasonably incorporate into the contract.

(c) If the department enters into a contract authorized by subdivision (b), the department may require cancellation clauses, fees, personnel résumés, reports, or other reasonable information or

documents deemed necessary to ensure that subdivision (b) and this part are adequately enforced.

SEC. 11. Section 18604 of the Health and Safety Code is amended to read:

18604. (a) No manufactured home, mobilehome, or recreational vehicle within a park shall be rented or leased unless it bears a label, an insignia, or an insignia of approval required by Section 18026 or 18027.3, or a federal label issued pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Sec. 5401 et seq.).

(b) A recreational vehicle that does not bear a label, an insignia, or an insignia of approval, as required by subdivision (f) or (g) of Section 18027.3, may not occupy any lot in a special occupancy park unless the vehicle owner provides reasonable proof of compliance with ANSI Standard No. A119.2 or A119.5. A department label or insignia shall constitute one form of reasonable proof of compliance with ANSI standards. This subdivision does not apply to a recreational vehicle occupying a lot in a special occupancy park on December 31, 1998, unless the vehicle is moved to a different special occupancy park on or after January 1, 1999.

SEC. 12. Section 4.5 of this bill incorporates amendments to Section 18025 of the Health and Safety Code proposed by both this bill and SB 1988. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 18025 of the Health and Safety Code, and (3) this bill is enacted after SB 1988, in which case Section 4 of this bill shall not become operative.

SEC. 13. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 294

An act to amend Sections 318.5 and 318.6 of the Penal Code, relating to adult entertainment.

[Approved by Governor August 17, 1998. Filed with Secretary of State August 17, 1998.]

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

SECTION 1. The Legislature finds and declares as follows:

(a) The presentation of live nude entertainment within adult or sexually oriented businesses may be found to create undesirable secondary effects including, but not limited to, an increase in criminal activities such as prostitution and drug dealing in the vicinity of the property on which the entertainment is being provided.

(b) This act shall not be construed to require the adoption of any ordinance, but is instead intended to be declaratory of existing law authorizing cities and counties to adopt these ordinances.

(c) This act shall not be construed to preempt the legislative body of any city or county from regulating adult or sexually oriented businesses or similar establishments in the manner, and to the extent permitted by the United States Constitution and the California Constitution.

SEC. 2. Section 318.5 of the Penal Code is amended to read:

318.5. (a) Nothing in this code shall invalidate an ordinance of, or be construed to prohibit the adoption of an ordinance by, a county or city, if that ordinance directly regulates the exposure of the genitals or buttocks of any person, or the breasts of any female person, who acts as a waiter, waitress, or entertainer, whether or not the owner of the establishment in which the activity is performed employs or pays any compensation to that person to perform the activity, in an adult or sexually oriented business. For purposes of this section, an "adult or sexually oriented business" includes any establishment that regularly features live performances which are distinguished or characterized by an emphasis on the exposure of the genitals or buttocks of any person, or the breasts of any female person, or specified sexual activities that involve the exposure of the genitals or buttocks of any person, or the breasts of any female person.

(b) The provisions of this section shall not be construed to apply to any adult or sexually oriented business, as defined herein, that has been adjudicated by a court of competent jurisdiction to be, or by action of a local body such as issuance of an adult entertainment establishment license or permit allowing the business to operate on or before July 1, 1998, as, a theater, concert hall, or similar establishment primarily devoted to theatrical performances for purposes of this section.

This section shall be known and may be cited as the "Quimby-Walsh Act."

SEC. 3. Section 318.6 of the Penal Code is amended to read:

318.6. (a) Nothing in this code shall invalidate an ordinance of, or be construed to prohibit the adoption of an ordinance by, a city or county, if that ordinance relates to any live acts, demonstrations, or exhibitions occurring within adult or sexually oriented businesses and involve the exposure of the genitals or buttocks of any participant or

the breasts of any female participant, and if that ordinance prohibits an act or acts which are not expressly authorized or prohibited by this code.

(b) For purposes of this section, an "adult or sexually oriented business" includes any establishment that regularly features live performances which are distinguished or characterized by an emphasis on the exposure of the genitals or buttocks of any person, or the breasts of any female person or sexual activities that involve the exposure of the genitals or buttocks of any person, or the breasts of any female person.

(c) The provisions of this section shall not be construed to apply to any adult or sexually oriented business, as defined herein, that has been adjudicated by a court of competent jurisdiction to be, or by action of a local body such as issuance of an adult entertainment establishment license or permit allowing the business to operate on or before July 1, 1998, as, a theater, concert hall, or similar establishment primarily devoted to theatrical performances for purposes of this section.

(d) This section shall not be construed to preempt the legislative body of any city or county from regulating an adult or sexually oriented business, or similar establishment, in the manner and to the extent permitted by the United States Constitution and the California Constitution.

CHAPTER 295

An act to add Section 116551 to the Health and Safety Code, relating to water, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 17, 1998. Filed with Secretary of State August 17, 1998.]

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

SECTION 1. Section 116551 is added to the Health and Safety Code, to read:

116551. The department shall not issue a permit to a public water system or amend a valid existing permit for the use of a reservoir as a source of supply that is directly augmented with recycled water, as defined in subdivision (n) of Section 13050 of the Water Code, unless the department does all of the following:

(a) Performs an engineering evaluation that evaluates the proposed treatment technology and finds that the proposed technology will ensure that the recycled water meets or exceeds all applicable primary and secondary drinking water standards and poses no significant threat to public health.

(b) Holds at least three duly noticed public hearings in the area where the recycled water is proposed to be used or supplied for human consumption to receive public testimony on that proposed use. The department shall make available to the public, not less than 10 days prior to the date of the first hearing held pursuant to this subdivision, the evaluations and findings made pursuant to subdivision (a).

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

In order that prescribed requirements may apply, as soon as possible, to the proposed use by a public water system of reservoirs that are augmented with recycled water, thereby ensuring the safety of recycled water provided for human consumption, it is necessary that this act take effect immediately.

CHAPTER 296

An act to amend Sections 20616 and 20618 of, and to add Section 21623.5 to, the Government Code, relating to public employees.

[Approved by Governor August 17, 1998. Filed with Secretary of State August 17, 1998.]

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

SECTION 1. Section 20616 of the Government Code is amended to read:

20616. Sections 20469, 20470, 20502, 20512, 20570, 20571, and 20572 do not apply to contracts made pursuant to this chapter. The county superintendent of schools shall have no authority to exercise any election under any provision of this part, other than Section 21623.5, that applies to a contracting agency only on its election to be subject to it.

SEC. 2. Section 20618 of the Government Code is amended to read:

20618. The assets and liabilities arising out of contracts with school employers, as defined in Section 20063, shall be merged, excluding that portion of a contract that provides benefits pursuant to Section 21623.5, that portion of a contract with respect to local police officers, as defined in Section 20430, and those contracts with school districts or community college districts, as defined in subdivision (i) of Section 20057, which employ school safety members, as defined in Section 20444. Employer accumulated contributions credited to those entities on June 30, 1982, and all the contributions paid by a school

employer after June 30, 1982, shall be held exclusively for the benefit of school members, retired school members, and their beneficiaries.

A person who is a member under a contract between the board and school districts or community college districts prior to July 1, 1983, shall not be denied any right extended to him or her by reason of that membership.

SEC. 3. Section 21623.5 is added to the Government Code, to read:

21623.5. In lieu of benefits provided by Sections 21620 and 21622 upon the death of any local or school member, after retirement and while receiving a retirement allowance from this system, there shall be paid to his or her estate, or to the beneficiary who he or she shall nominate by written designation duly executed and filed with the board, the sum of two thousand dollars ($2,000), three thousand dollars ($3,000), four thousand dollars ($4,000), or five thousand dollars ($5,000), whichever amount is designated by the employer in its contract, to be provided from contributions by the employer.

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.

The additional employer contributions required under this section shall be computed as a level percentage of member compensation.

This section shall not apply to a contracting agency or school employer unless and until the agency or school employer elects to be subject to this section by amendment to its contract made in the manner prescribed for approval of contracts, except an election among the employees is not required or in the case of contracts made on or after January 1, 1999, except by express provision in the contract making the contracting agency or school employer subject to this section.

CHAPTER 297

An act to add Section 12370 to the Penal Code, relating to body armor.

[Approved by Governor August 17, 1998. Filed with Secretary of State August 17, 1998.]

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

SECTION 1. This act shall be known as the James Guelff Body Armor Act of 1998.

SEC. 2. Section 12370 is added to the Penal Code, to read:

12370. (a) Any person who has been convicted of a violent felony, as defined in subdivision (c) Section 667.5 under the laws of the United States, the State of California, or any other state, government, or country, who purchases, owns, or possesses body armor, as defined by Section 942 of Title 11 of the California Code of Regulations, except as authorized under subdivision (b), is guilty of a felony, punishable by imprisonment in a state prison for 16 months, or two or three years.

(b) Any person whose employment, livelihood, or safety is dependent on the ability to legally possess and use body armor, who is subject to the prohibition imposed by subdivision (a) due to a prior violent felony conviction, may file a petition with the chief of police or county sheriff of the jurisdiction in which he or she seeks to possess and use the body armor for an exception to this prohibition. The chief of police or sheriff may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as he or she deems appropriate, based on the following:

(1) A finding that the petitioner is likely to use body armor in a safe and lawful manner.

(2) A finding that the petitioner has a reasonable need for such protection under the circumstances.

In making its decision, the chief of police or sheriff shall consider the petitioner's continued employment, the interests of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that law enforcement officials exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require law enforcement officials to grant relief to any particular petitioner. Relief from this prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed.

(c) The chief of police or sheriff shall require, as a condition of granting an exception under subdivision (b), that the petitioner agree to maintain on his or her person a certified copy of the law enforcement official's permission to possess and use body armor, including any conditions or limitations.

(d) Law enforcement officials who enforce the prohibition specified in subdivision (a) against a person who has been granted relief pursuant to subdivision (b), shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the permission granting the person relief from the prohibition, as required by subdivision (c). This immunity from liability shall not relieve any person or entity from any other liability that might otherwise be imposed.

(e) For purposes of this section only, "violent felony" refers to the specific crimes listed in subdivision (c) of Section 667.5, and to crimes

defined under the applicable laws of the United States or any other state, government, or country that are reasonably equivalent to the crimes listed in subdivision (c) of Section 667.5.

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 that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 298

An act to add and repeal Section 14302.1 of the Corporations Code, relating to mutual water companies.

[Approved by Governor August 17, 1998. Filed with Secretary of State August 17, 1998.]

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

SECTION 1. (a) The Legislature hereby finds and declares all of the following:

(1) Mutual water companies in California are corporations subject to the California General Corporation Law. Mutual water companies issue shares of stock to property owners within their respective service areas, which shares entitle the owners thereof to receive water on that property.

(2) Existing law requires that shares issued by mutual water companies be rendered appurtenant to the land within the service area of the respective mutual water company. Appurtenance is accomplished by means of a provision within a mutual water company's articles of incorporation or bylaws. Ownership of appurtenant shares is tied to the ownership of the underlying real property. When real property is transferred through sale, foreclosure, or other means, the related shares are transferred to the new property owners.

(3) Older mutual water companies issued shares before the requirement of appurtenance was enacted under the Corporations Code. Accordingly, these older mutual water companies frequently have difficulty regulating the transfer of shares to property owners entitled to water service. Certain shares have been lost, forgotten,

destroyed, or otherwise mislaid as a result of property transfers, foreclosures, estate sales, and the like, and therefore are owned of record by people who no longer own property in the service area. These shareholders remain on the registry of the older mutual water companies, thus hindering the ability of these older mutual water companies to obtain a quorum of shareholders for corporate governance purposes.

(4) Lost shares present a governance problem for older mutual water companies which, as corporations, must have a quorum of the outstanding shares present to transact certain business and which, in certain circumstances, must obtain the vote of the majority of the outstanding shares.

(b) It is the intent of the Legislature to provide mutual water companies formed on or prior to May 14, 1983, the opportunity to cancel lost shares which are unclaimed after reasonable efforts have been made by the mutual water companies to locate the recordholders of those lost shares, in order that those mutual water companies can muster the shareholder representation necessary to effectively conduct business.

SEC. 2. Section 14302.1 is added to the Corporations Code, to read:

14302.1. (a) For the purpose of this section, "lost shares" is defined as shares which satisfy all of the following conditions:

(1) They were issued by a mutual water company formed on or before May 14, 1983.

(2) They have not been rendered appurtenant to land within that mutual water company's service area.

(3) They remain on the company's share registry.

(4) The owners of the shares cannot be located by the mutual water company pursuant to this section.

(b) Lost shares shall be deemed canceled by operation of law if both of the following requirements are met:

(1) The mutual water company sends a written notice by certified mail to the last known address of the recordholder of lost shares stating that the lost shares will be canceled and deemed to be of no force or effect unless the recordholder responds to the mutual water company in writing and the response is received by the mutual water company within six months of the certified mailing date of the notice.

(2) The mutual water company posts notice in not less than three daily newspapers with circulation in the company's service area, or if there are less than three daily newspapers with circulation in the company's service area, in all daily newspapers with circulation within the service area, once a month for six months stating that unclaimed lost shares will be canceled and deemed to be of no force or effect unless the holders of those lost shares request otherwise.

(c) This section 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. 3. Nothing in Section 14302.1 of the Corporations Code shall prevent a shareholder from bringing an action for issuance of duplicative lost shares pursuant to existing law, including, but not limited to, Section 419 of the Corporation Code.

CHAPTER 299

An act to amend Sections 42825, 42835, and 42850 of, and to add Section 42850.1 to, the Public Resources Code, relating to waste tires.

[Approved by Governor August 17, 1998. Filed with Secretary of State August 17, 1998.]

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

SECTION 1. Section 42825 of the Public Resources Code is amended to read:

42825. (a) Any person who accepts waste tires at a major waste tire facility that has not been issued a permit or who knowingly directs or transports waste tires to a major waste tire facility that has not been issued a permit shall, upon conviction, be punished by a fine of not less than one thousand dollars ($1,000) or more than ten thousand dollars ($10,000) for each day of violation, by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment.

(b) For purposes of subdivision (a), "each day of violation" means each day on which a violation continues. In any case where a person has accepted waste tires at a major waste tire facility, or knowingly directed or transported waste tires to a major waste tire facility, that has not been issued a permit, in violation of subdivision (a), each day that the waste tires remain at the facility and the person has knowledge thereof is a separate additional violation, unless the person has filed a report with the board disclosing the violation and is in compliance with any order regarding the waste tires issued by the board, a hearing officer, or a court of competent jurisdiction.

SEC. 1.5. Section 42825 of the Public Resources Code is amended to read:

42825. (a) Any person who accepts waste tires at a major waste tire facility that has not been issued a permit or an authorization to operate from the board, or who knowingly directs, transports, or abandons waste tires to or at a major waste tire facility that has not been issued a permit or an authorization to operate from the board shall, upon conviction, be punished by a fine of not less than one thousand dollars ($1,000) or more than ten thousand dollars ($10,000)

for each day of violation, by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment.

(b) For purposes of subdivision (a), "each day of violation" means each day on which a violation continues. In any case where a person has accepted waste tires at a major waste tire facility, or knowingly directed or transported waste tires to a major waste tire facility, that has not been issued a permit, in violation of subdivision (a), each day that the waste tires remain at the facility and the person has knowledge thereof is a separate additional violation, unless the person has filed a report with the board disclosing the violation and is in compliance with any order regarding the waste tires issued by the board, a hearing officer, or a court of competent jurisdiction.

SEC. 2. Section 42835 of the Public Resources Code is amended to read:

42835. (a) Any person who accepts waste tires at a minor waste tire facility that has not been issued a permit or who knowingly directs or transports waste tires to a minor waste tire facility that has not been issued a permit shall, upon conviction, be punished by a fine of not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000) for each day of violation, by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment.

(b) For purposes of subdivision (a), "each day of violation" means each day on which a violation continues. In any case where a person has accepted waste tires at a minor waste tire facility, or knowingly directed or transported waste tires to a minor waste tire facility, that has not been issued a permit, in violation of subdivision (a), each day that the waste tires remain at the facility and the person has knowledge thereof is a separate additional violation, unless the person has filed a report with the board disclosing the violation and is in compliance with any order regarding the waste tires issued by the board, a hearing officer, or a court of competent jurisdiction.

SEC. 2.5. Section 42835 of the Public Resources Code is amended to read:

42835. (a) Any person who accepts waste tires at a minor waste tire facility that has not been issued a permit or an authorization to operate from the board, or who knowingly directs, transports, or abandons waste tires to or at a minor waste tire facility that has not been issued a permit or an authorization to operate from the board shall, upon conviction, be punished by a fine of not less than five hundred dollars ($500) or more than five thousand dollars ($5,000) for each day of violation, by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment.

(b) For purposes of subdivision (a), "each day of violation" means each day on which a violation continues. In any case where a person has accepted waste tires at a major waste tire facility, or knowingly directed or transported waste tires to a major waste tire facility, that has not been issued a permit, in violation of subdivision (a), each day

that the waste tires remain at the facility and the person has knowledge thereof is a separate additional violation, unless the person has filed a report with the board disclosing the violation and is in compliance with any order regarding the waste tires issued by the board, a hearing officer, or a court of competent jurisdiction.

SEC. 3. Section 42850 of the Public Resources Code is amended to read:

42850. (a) Any person who negligently violates any provision of this chapter, or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter, is liable for a civil penalty of not less than five hundred dollars ($500) or more than five thousand dollars ($5,000), for each violation of a separate provision or, for continuing violations, for each day that the violation continues.

(b) Liability under this section may be imposed in a civil action or liability may be imposed administratively pursuant to this article.

(c) Upon request of a city, county, or city and county, that city, county, or city and county may be designated, in writing, by the board, to exercise the enforcement authority granted to the board under this chapter. Any city, county, or city and county so designated shall follow the same procedures set forth for the board under this article. This designation shall not limit the authority of the board to take action it deems necessary or proper to ensure the enforcement of this chapter.

SEC. 3.5. Section 42850 of the Public Resources Code is amended to read:

42850. (a) Any person who negligently violates any provision of this chapter, or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter, is liable for a civil penalty of not less than five hundred dollars ($500) or more than five thousand dollars ($5,000), for each violation of a separate provision or, for continuing violations, for each day that the violation continues.

(b) Liability under this section may be imposed in a civil action or liability may be imposed administratively pursuant to this article.

(c) Upon request of a city, county, or city and county, that city, county, or city and county may be designated, in writing, by the board, to exercise the enforcement authority granted to the board under this chapter. Any city, county, or city and county so designated shall follow the same procedures set forth for the board under this article. This designation shall not limit the authority of the board to take action it deems necessary or proper to ensure to enforcement of this chapter.

SEC. 4. Section 42850.1 is added to the Public Resources Code, to read:

42850.1. (a) Any person who intentionally violates any provision of this chapter, or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter, shall, upon

conviction, be punished by a fine not to exceed ten thousand dollars ($10,000) for each day of violation, by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment.

(b) (1) Any person who intentionally violates any provision of this chapter, or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter, is liable for a civil penalty not to exceed ten thousand dollars ($10,000), for each violation of a separate provision or, for continuing violations, for each day that the violation continues.

(2) Liability under this subdivision may be imposed in a civil action or may be imposed administratively pursuant to this article.

SEC. 5. Section 1.5 of this bill incorporates amendments to Section 42825 of the Public Resources Code proposed by both this bill and AB 228. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 42825 of the Public Resources Code, and (3) this bill is enacted after AB 228, in which case Section 1 of this bill shall not become operative.

SEC. 6. Section 2.5 of this bill incorporates amendments to Section 42835 of the Public Resources Code proposed by both this bill and AB 228. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 42835 of the Public Resources Code, and (3) this bill is enacted after AB 228, in which case Section 2 of this bill shall not become operative.

SEC. 7. Section 3.5 of this bill incorporates amendments to Section 42850 of the Public Resources Code proposed by both this bill and AB 228. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 42850 of the Public Resources Code, and (3) this bill is enacted after AB 228, in which case Section 3 of this bill shall not become operative.

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 that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 300

An act to amend Section 5221 of the Business and Professions Code, relating to outdoor advertising.

[Approved by Governor August 17, 1998. Filed with Secretary of State August 17, 1998.]

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

SECTION 1. Section 5221 of the Business and Professions Code is amended to read:

5221. "Sign" refers to any card, cloth, paper, metal, painted or wooden sign of any character placed for outdoor advertising purposes on or to the ground or any tree, wall, bush, rock, fence, building, structure or thing, either privately or publicly owned, other than an advertising structure.

"Sign" does not include any of the following:

(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 any legal notice.

(c) Directional warning or information signs or structures required by or authorized by law or by federal, state or county authority.

(d) A sign erected near a city or county boundary that contains the name of that city or county and the names of, or any other information regarding, civic, fraternal, or religious organizations located within that city or county.

CHAPTER 301

An act to add Section 2230.5 to the Business and Professions Code, relating to physician discipline, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 17, 1998. Filed with Secretary of State August 17, 1998.]

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

SECTION 1. Section 2230.5 is added to the Business and Professions Code, to read:

2230.5. (a) Except as provided in subdivision (b), any accusation filed against a licensee pursuant to Section 11503 of the Government Code shall be filed within three years after the board, or a division thereof, discovers the act or omission alleged as the ground for disciplinary action, or within seven years after the act or omission

alleged as the ground for disciplinary action occurs, whichever occurs first.

(b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging the procurement of a license by fraud or misrepresentation is not subject to the limitation provided for by subdivision (a).

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

In order for the Medical Board of California to enforce actions involving physician and surgeon licensure in the most appropriate and timely manner, it is necessary that this act take effect immediately.

CHAPTER 302

An act to add Section 784.7 to the Penal Code, relating to criminal procedure.

[Approved by Governor August 17, 1998. Filed with Secretary of State August 17, 1998.]

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

SECTION 1. Section 784.7 is added to the Penal Code, to read:

784.7. When more than one violation of Section 261, 262, 264.1, 273a, 273.5, 286, 288, 288a, 288.5, 289, or 646.9 occurs in more than one jurisdictional territory, and the defendant and the victim are the same for all of the offenses, the jurisdiction of any of those offenses is in any jurisdiction where at least one of the offenses occurred.

CHAPTER 303

An act to add Section 44283.2 to the Education Code, relating to teaching credentials.

[Approved by Governor August 17, 1998. Filed with Secretary of State August 17, 1998.]

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

SECTION 1. Section 44283.2 is added to the Education Code, to read:

44283.2. (a) Commencing on January 1, 2000, prior to the initial issuance of a specialist teaching credential in special education pursuant to Section 44265, except as provided in subdivision (b) an applicant for the credential shall be required to demonstrate that he or she passed the reading instruction competence assessment developed pursuant to Section 44283.

(b) This section shall not apply to an applicant for an Early Childhood Special Education Certificate, which authorizes the holder to provide educational services to children from birth through prekindergarten who are eligible for early intervention special education and related services.

CHAPTER 304

An act making an appropriation for the payment of claims against the State of California, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 17, 1998. Filed with Secretary of State August 17, 1998.]

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

SECTION 1. (a) The sum of eight hundred two thousand nine hundred eighty dollars and thirty-five cents ($802,980.35) is hereby appropriated to the Secretary of the State Board of Control to pay claims accepted by the State Board of Control in accordance with the schedule set forth in subdivision (b). Those payments shall be made from the funds and accounts identified in that schedule. In the case of Budget Act items and item schedules identified in the schedule set forth in subdivision (b), those payments shall be made from the funds appropriated in the item or item schedule.

(b) Pursuant to subdivision (a), claims accepted by the State Board of Control shall be paid in accordance with the following schedule:

Total for Fund: Architecture Revolving Fund	$53,681.32
Total for Fund: Bank and Corporation Tax Fund	$2,606.12
Total for Fund: California Water Resources Development Bond Fund	$5,699.39
Total for Fund: Earthquake Recovery Fund	$17.08
Total for Fund: Employment Development Contingent Fund	$5,308.06

Total for Fund: General Fund	$20,265.68
Total for Fund: Health Care Deposit Fund	$416.56
Total for Fund: Inmate Welfare Fund	$22,948.08
Total for Fund: Item 0690−001−0001(a), Budget Act of 1998	$1,905.53
Total for Fund: Item 0820−001−0001(d), Budget Act of 1998	$3,979.82
Total for Fund: Item 0845−001−0217(a), Budget Act of 1998	$406,825.24
Total for Fund: Item 0860−001−0001(a), Budget Act of 1998	$63.97
Total for Fund: Item 1760−001−0666(a), Budget Act of 1998	$411.00
Total for Fund: Item 1880−001−0001(a), Budget Act of 1998	$1,470.00
Total for Fund: Item 2660−001−0042(b), Budget Act of 1998	$9,454.61
Total for Fund: Item 2720−001−0044(a), Budget Act of 1998	$597.68
Total for Fund: Item 2740−001−0044(a), Budget Act of 1998	$1,457.36
Total for Fund: Item 2920−001−0001, Budget Act of 1997	$24,171.77
Total for Fund: Item 3480−001−0001, Budget Act of 1998	$500.00
Total for Fund: Item 3790−001−0392(a), Budget Act of 1998	$1,952.20
Total for Fund: Item 3900−001−0044(a), Budget Act of 1998	$1,370.00
Total for Fund: Item 4140−001−0001(g), Budget Act of 1998	$498.80
Total for Fund: Item 4200−001−0001(a), Budget Act of 1998	$10,200.34
Total for Fund: Item 4260−001−0001(1), Budget Act of 1998	$2,672.00
Total for Fund: Item 4260−001−0001(2), Budget Act of 1998	$1,894.00
Total for Fund: Item 4440−001−0001(a), Budget Act of 1998	$451.00

Total for Fund: Item 4440−011−0001(a), Budget Act of 1998	$155.00
Total for Fund: Item 5100−001−0870(a), Budget Act of 1998	$548.00
Total for Fund: Item 5160−001−0001(a), Budget Act of 1998	$2,906.19
Total for Fund: Item 5180−001−0001(a), Budget Act of 1998	$1,443.47
Total for Fund: Item 5180−001−0001(d), Budget Act of 1998	$674.81
Total for Fund: Item 5240−001−0001(a), Budget Act of 1997	$11,297.30
Total for Fund: Item 5240−001−0001(a), Budget Act of 1998	$148,691.98
Total for Fund: Item 6110−006−0001(a), Budget Act of 1998	$370.00
Total for Fund: Item 6610−001−0001(a), Budget Act of 1998	$993.38
Total for Fund: Item 8450−001−0001(b), Budget Act of 1998	$349.12
Total for Fund: Item 8860−001−0001(a), Budget Act of 1998	$1,018.25
Total for Fund: Lottery Fund	$685.00
Total for Fund: Personal Income Tax Fund	$131.08
Total for Fund: Public Employees' Retirement Fund, Budget Act of 1998	$847.44
Total for Fund: Retail Sales and Use Tax Fund	$790.26
Total for Fund: State Corporations Fund	$500.00
Total for Fund: State Highway Account, State Transportation Fund	$548.00
Total for Fund: Tax Relief and Refund Account	$44,726.24
Total for Fund: Teachers' Retirement Fund	$189.77
Total for Fund: Transportation Revolving Account	$209.88
Total for Fund: Unemployment Compensation Disability Fund	$5,087.57

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 settle claims against the state and end hardship to claimants as quickly as possible, it is necessary that this act take effect immediately.

CHAPTER 305

An act to amend Section 11107.1 of the Health and Safety Code, relating to controlled substances.

[Approved by Governor August 17, 1998. Filed with Secretary of State August 17, 1998.]

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

SECTION 1. Section 11107.1 of the Health and Safety Code is amended to read:

11107.1. (a) Any manufacturer, wholesaler, retailer, or other person in this state who sells to any person in this state or any other state any quantity of sodium cyanide, potassium cyanide, cyclohexanone, bromobenzene, magnesium turnings, mercuric chloride, sodium metal, lead acetate, paladium black, red phosphorous, iodine, hydrogen chloride gas, trichlorofluoromethane (fluorotrichloromethane), dichlorodifluoromethane, 1,1,2-trichloro-1,2,2-trifluoroethane (trichlorotrifluoroethane), sodium acetate, or acetic anhydride shall do the following:

(1) Notwithstanding any other provision of law, prepare a bill of sale which both identifies the specific items and quantities purchased and the proper purchaser identification information, both of which shall be entered onto the bill of sale or a legible copy of the bill of sale, and shall also affix on the bill of sale his or her signature as witness to the purchase and identification of the purchaser.

(2) Notwithstanding any other provision of law, require proper purchaser identification for in-state purchases that includes a valid motor vehicle operator's license or other official and valid state-issued identification of the purchaser that contains a photograph of the purchaser, and includes the residential or mailing address of the purchaser, other than a post office box number, the motor vehicle license number of the motor vehicle used by the purchaser at the time of purchase, a description of how the substance is to be used, the Environmental Protection Agency certification number or business resale number assigned to the individual or business entity for which the individual is purchasing any chlorofluorocarbon product, and the signature of the purchaser.

Proper purchaser identification for out-of-state purchases includes all of the above, except the motor vehicle license number and the signature of the purchaser. The out-of-state purchase information shall also include the means by which the purchase was delivered or provided to the purchaser and the delivery address, if different from the identification address provided by the purchaser.

(3) Retain the original bill of sale containing the purchaser identification information for three years in a readily presentable manner, and present the bill of sale containing the purchaser identification information upon demand by any law enforcement officer or authorized representative of the Attorney General. Copies of these bills of sale obtained by representatives of the Attorney General shall be maintained by the Department of Justice for a period of not less than five years.

(b) Any manufacturer, wholesaler, retailer, or other person in this state who purchases any item listed in subdivision (a) of Section 11107.1 shall do the following:

(1) Provide on the record of purchase information on the source of the items purchased, the date of purchase, a description of the specific items, the quantities of each item purchased, and the cost of the items purchased.

(2) Retain the record of purchase for three years in a readily presentable manner and present the record of purchase upon demand to any law enforcement officer or authorized representative of the Attorney General.

(c) (1) Except as provided in subdivision (d), no manufacturer, wholesaler, retailer, or other person shall sell to any individual, and no individual shall buy, more than eight ounces of iodine in any 30-day period.

(2) Except as provided in subdivision (d), no manufacturer, wholesaler, retailer, or other person shall sell to any individual, and no individual shall buy, more than four ounces of red phosphorous in any 30-day period.

(3) This subdivision does not apply to any sale of red phosphorous made to a person or business that is licensed or regulated by state or federal law with respect to the purchase or use of red phosphorous.

(d) For purposes of this section, these requirements do not apply to either of the following:

(1) Any sale of tincture of iodine or any topical solution containing iodine that is equal to or less than one hundred dollars ($100).

(2) Any sale of iodine made to a licensed health care facility, any manufacturer licensed by the State Department of Health Services, or wholesaler licensed by the California State Board of Pharmacy who sells, transfers, or otherwise furnishes the iodine to a licensed pharmacy, physician, dentist, podiatrist, or veterinarian.

(e) A violation of this section is a misdemeanor.

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

only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 306

An act to amend Section 1569.38 of, and to add Section 1569.61 to, the Health and Safety Code, relating to residential care facilities.

[Approved by Governor August 17, 1998. Filed with Secretary of State August 17, 1998.]

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

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

(1) Residential care facilities for the elderly provide a continuum of long-term care services that support the fluctuating social and personal care needs of elderly residents.

(2) Many consumers are not familiar with residential care facilities for the elderly.

(3) The choice of a residential care facility for the elderly often occurs during a time of great stress. Because the prospective resident may have just suffered a significant medical setback that prevents him or her from living independently, the choice of a facility often must be made within the span of a few days.

(4) Consumer knowledge of residential care facilities will be greatly enhanced if the information developed and maintained by the State Department of Social Services is made available to consumers.

(b) It is the intent of the Legislature to provide consumers with ready access to the information developed and maintained by the State Department of Social Services regarding residential care facilities for the elderly. It is further the intent of the Legislature that the State Department of Social Services shall make its public file on any residential care facility for the elderly available for inspection immediately upon the request of any person.

SEC. 2. Section 1569.38 of the Health and Safety Code is amended to read:

1569.38. Each residential care facility for the elderly shall place in a conspicuous place copies of all licensing reports issued by the department within the preceding 12 months, and all licensing reports issued by the department resulting from the most recent annual visit of the department to the facility. This subdivision shall not apply to any portion of a licensing report referring to a complaint that was found by the department to be unfounded or unsubstantiated. The facility, during the admission process, shall inform the resident and the resident's responsible person in writing that licensing reports are available for review at the facility, and that copies of licensing reports and other documents pertaining to the facility are available from the appropriate district office of the department. The facility shall provide the telephone number and address of the appropriate district office.

SEC. 3. Section 1569.61 is added to the Health and Safety Code, to read:

1569.61. The department shall develop and maintain at each district office a file for each facility in that district, containing all documents regarding the facility that were received or created by the department on or after January 1, 1999, and that are not confidential under other provisions of law. This file shall be available immediately upon the request of any consumer who shall have the right to obtain copies of documents from the file upon the payment of a reasonable charge for the copies.

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 that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 307

An act to amend Sections 10708 and 10710 of the Public Contract Code, relating to the California State University.

[Approved by Governor August 17, 1998. Filed with Secretary of State August 17, 1998.]

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

SECTION 1. Section 10708 of the Public Contract Code is amended to read:

10708. When, in the opinion of the trustees, the best interests of the California State University dictate, the trustees may enter into an agreement with a contractor to provide all or significant portions of the design services and construction of a project under this chapter. The contractor shall design the project pursuant to the scope of services set forth in the request for proposals, build the project, and present the completed project to the trustees for their approval and acceptance. Work under this section shall be carried out by a contractor chosen by a competitive bidding process that employs selection criteria in addition to cost. Any design work performed pursuant to this section shall be prepared and signed by an architect certificated pursuant to Chapter 3 (commencing with Section 5500) of Division 3 of the Business and Professions Code.

SEC. 2. Section 10710 of the Public Contract Code is amended to read:

10710. (a) Notwithstanding any other provisions of this chapter, the trustees may award annual contracts that do not exceed three million dollars ($3,000,000) for repair or other repetitive work, or renovation or modification, to be done according to unit prices. The contracts shall be awarded to the lowest responsible bidder and shall be based primarily on plans and specifications for typical work. No project shall be performed under a contract of this type except by order of the trustees. No annual contracts may be awarded under these provisions for capital outlay projects, where the total cost of the project exceeds two hundred fifty thousand dollars ($250,000) or the limit on minor capital outlay projects as determined in the annual Budget Act, whichever is greater.

(b) For purposes of this section, "unit price" means the amount paid for a single unit of an item of work, and "typical work" means a work description applicable universally or applicable to a large number of individual projects, as distinguished from work specifically described with respect to an individual project.

CHAPTER 308

An act to amend Section 830.14 of the Penal Code, relating to law enforcement, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 17, 1998. Filed with Secretary of State August 17, 1998.]

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

SECTION 1. Section 830.14 of the Penal Code is amended to read:

830.14. (a) A local or regional transit agency or a joint powers agency operating rail service identified in an implementation program adopted pursuant to Article 10 (commencing with Section 130450) of Chapter 4 of Division 12 of the Public Utilities Code may authorize by contract designated persons as conductors performing fare inspection duties who are employed by a railroad corporation that operates public rail commuter transit services for that agency to act as its agent in the enforcement of subdivisions (a) and (b) of Section 640 relating to the operation of the rail service if they complete the training requirement specified in subdivision (c).

(b) The governing board of the Altamont Commuter Express Authority, a joint powers agency duly formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, by and between the Alameda Congestion Management Agency, the Santa Clara County Transit District, and the San Joaquin Regional Rail Commission, may contract with designated persons to act as its agents in the enforcement of subdivisions (a) and (b) of Section 640 relating to the operation of a public transportation system if these persons complete the training requirement specified in subdivision (c).

(c) Persons authorized pursuant to this section to enforce subdivisions (a) and (b) of Section 640 shall complete a specialized fare compliance course which shall be provided by the authorizing agency. This training course shall include, but not be limited to, the following topics:

(1) An overview of barrier-free fare inspection concepts.

(2) The scope and limitations of inspector authority.

(3) Familiarization with the elements of the infractions enumerated in subdivisions (a) and (b).

(4) Techniques for conducting fare checks, including, inspection procedures, demeanor, and contacting violators.

(5) Citation issuance and court appearances.

(6) Fare media recognition.

(7) Handling argumentative violators and diffusing conflict.

(8) The mechanics of law enforcement support and interacting with law enforcement for effective incident resolution.

(d) Persons described in subdivisions (a) and (b) are public officers, not peace officers, have no authority to carry firearms or any other weapon while performing the duties authorized in this section, and may not exercise the powers of arrest of a peace officer while performing the duties authorized in this section. These persons may be authorized by the agencies specified in subdivision (a) or (b) to issue citations involving infractions relating to the operation of the rail service specified in subdivision (a) or (b).

(e) Nothing in this section shall affect the retirement or disability benefits provided to employees described in subdivision (a) or (b) or be in violation of any collective bargaining agreement between a labor organization and a railroad corporation.

(f) Notwithstanding any other provision of this section, the primary responsibility of a conductor of a commuter passenger train shall be functions related to safe train operation.

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 Altamont Commuter Express Authority. The facts constituting the special circumstances are:

The Altamont Commuter Express rail service will run through three counties and 11 city jurisdictions. The regional nature of this rail service necessitates that a single agency be authorized to appoint agents for the issuance of citations for any violations of Section 640 of the Penal Code occurring along the service area of the Altamont Commuter Express rail service.

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 this act may apply prior to the projected startup of the Altamont Commuter Express rail service, it is necessary that this act take effect immediately.

CHAPTER 309

An act to amend Sections 25200.3 and 25201.5 of, to add Section 25143.13 to, and to repeal Section 25201.5.1 of, the Health and Safety Code, relating to hazardous waste.

[Approved by Governor August 17, 1998. Filed with Secretary of State August 17, 1998.]

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

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

(a) In January 1991, the Environmental Protection Agency deleted the national primary drinking water standard for silver, based on its finding that silver posed no risks to human health. In November of 1994, the State Department of Health Services also deleted the primary maximum drinking water contaminant level for silver.

(b) Certain silver and silver compounds are excluded from regulation or are subject to minimal regulation under the federal act.

(c) Silver has a high positive economic value that minimizes the risk of mismanagement.

(d) The management of silver and silver compounds in the state does not warrant additional and more stringent regulatory oversight under Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

SEC. 2. Section 25143.13 is added to the Health and Safety Code, to read:

25143.13. (a) Notwithstanding any other provision of law, except as provided in subdivision (c), wastes containing silver or silver compounds that are RCRA hazardous wastes solely due to the presence of silver in the waste are subject to regulation under this chapter solely to the extent that these wastes are subject to regulation under the federal act.

(b) Notwithstanding any other provision of law, wastes containing silver or silver compounds are exempt from regulation under this chapter if the wastes are not subject to regulation under the federal act as RCRA hazardous waste, and the wastes would otherwise be subject to regulation under this chapter solely due to the presence of silver in the waste.

(c) With respect to treatment of a hazardous waste, subdivision (a) applies only to the removal of silver from photoimaging solutions and photoimaging solution wastewaters. Any other treatment of wastes containing silver or silver compounds that are RCRA hazardous wastes is subject to all of the applicable requirements of this chapter.

(d) The department shall amend its regulations, as necessary, to conform to this section. Until the department amends these regulations, the applicable regulations adopted by the Environmental Protection Agency pursuant to the federal act pertaining to the regulation of wastes containing silver or silver compounds, which are regulated as RCRA hazardous wastes solely due to the presence of silver in the waste, shall be deemed to be the regulations of the department, except as otherwise provided in subdivision (c).

(e) This section shall not be construed to limit or abridge the powers or duties granted to any state or local agency pursuant to any law, other than this chapter, to regulate wastes containing silver or silver compounds.

SEC. 3. Section 25200.3 of the Health and Safety Code is amended to read:

25200.3. (a) A generator who uses the following methods for treating RCRA or non-RCRA hazardous waste in tanks or containers, which is generated onsite, and which do not require a hazardous waste facilities permit under the federal act, shall, for those activities, be deemed to be operating pursuant to a grant of conditional

authorization without obtaining a hazardous waste facilities permit or other grant of authorization and a generator is deemed to be granted conditional authorization pursuant to this section, upon compliance with the notification requirements specified in subdivision (e), if the treatment complies with the applicable requirements of this section:

(1) The treatment of aqueous wastes which are hazardous solely due to the presence of inorganic constituents, except asbestos, listed in subparagraph (B) of paragraph (1) and subparagraph (A) of paragraph (2) of subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations, and which contain not more than 1400 ppm total of these constituents, using the following treatment technologies:

(A) Phase separation, including precipitation, by filtration, centrifugation, or gravity settling, including the use of demulsifiers and flocculants in those processes.

(B) Ion exchange, including metallic replacement.

(C) Reverse osmosis.

(D) Adsorption.

(E) pH adjustment of aqueous waste with a pH of between 2.0 and 12.5.

(F) Electrowinning of solutions, if those solutions do not contain hydrochloric acid.

(G) Reduction of solutions which are hazardous solely due to the presence of hexavalent chromium, to trivalent chromium with sodium bisulfite, sodium metabisulfite, sodium thiosulfite, ferrous chloride, ferrous sulfate, ferrous sulfide, or sulfur dioxide, provided that the solution contains less than 750 ppm of hexavalent chromium.

(2) Treatment of aqueous wastes which are hazardous solely due to the presence of organic constituents listed in subparagraph (B) of paragraph (1), or subparagraph (B) of paragraph (2), of subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations and which contain not more than 750 ppm total of those constituents, using either of the following treatment technologies:

(A) Phase separation by filtration, centrifugation, or gravity settling, but excluding supercritical fluid extraction.

(B) Adsorption.

(3) Treatment of wastes which are sludges resulting from wastewater treatment, solid metal objects, and metal workings which contain or are contaminated with, and are hazardous solely due to the presence of, constituents, except asbestos, listed in subparagraph (B) of paragraph (1) of, and subparagraph (A) of paragraph (2) of, subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations, or treatment of wastes which are dusts which contain, or are contaminated with, and are hazardous solely due to the presence of, not more than 750 ppm total of those constituents, except asbestos, listed in subparagraph (B) of paragraph (1) of, and subparagraph (A) of paragraph (2) of, subdivision (a) of Section

66261.24 of Title 22 of the California Code of Regulations, using any of the following treatment technologies:

(A) Physical processes which constitute treatment only because they change the physical properties of the waste, such as filtration, centrifugation, gravity settling, grinding, shredding, crushing, or compacting.

(B) Drying to remove water.

(C) Separation based on differences in physical properties, such as size, magnetism, or density.

(4) Treatment of alum, gypsum, lime, sulfur, or phosphate sludges, using either of the following treatment technologies:

(A) Drying to remove water.

(B) Phase separation by filtration, centrifugation, or gravity settling.

(5) Treatment of wastes listed in Section 66261.120 of Title 22 of the California Code of Regulations, which meet the criteria and requirements for special waste classification in Section 66261.122 of Title 22 of the California Code of Regulations, using any of the following treatment technologies, if the waste is hazardous solely due to the presence of constituents, except asbestos, listed in subparagraph (B) of paragraph (1) of, and subparagraph (A) of paragraph (2) of, subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations and the waste contains not more than 750 ppm total of those constituents:

(A) Drying to remove water.

(B) Phase separation by filtration, centrifugation, or gravity settling.

(C) Screening to separate components based on size.

(D) Separation based on differences in physical properties, such as size, magnetism, or density.

(6) Treatment of wastes, except asbestos, which have been classified by the department as special wastes pursuant to Section 66261.24 of Title 22 of the California Code of Regulations, using any of the following treatment technologies, if the waste is hazardous solely due to the presence of constituents, except asbestos, listed in subparagraph (B) of paragraph (1) of, and subparagraph (A) of paragraph (2) of, subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations and the waste contains not more than 750 ppm of those constituents:

(A) Drying to remove water.

(B) Phase separation by filtration, centrifugation, or gravity settling.

(C) Magnetic separation.

(7) Treatment of soils which are hazardous solely due to the presence of metals listed in subparagraph (A) of paragraph (2) of subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations, using either of the following treatment technologies:

(A) Screening to separate components based on size.

(B) Magnetic separation.

(8) Except as provided in Section 25201.5, treatment of oil mixed with water and oil/water separation sludges, using any of the following treatment technologies:

(A) Phase separation by filtration, centrifugation, or gravity settling, but excluding supercritical fluid extraction. This phase separation may include the use of demulsifiers and flocculants in those processes, even if the processes involve the application of heat, if the heat is applied in totally enclosed tanks and containers, and if it does not exceed 160 degrees Fahrenheit, or any lower temperature which may be set by the department.

(B) Separation based on differences in physical properties, such as size, magnetism, or density.

(C) Reverse osmosis.

(9) Neutralization of acidic or alkaline wastes that are hazardous only due to corrosivity or toxicity that results only from the acidic or alkaline material, in elementary neutralization units, as defined in Section 66260.10 of Title 22 of the California Code of Regulations, if the wastes contain less than 10 percent acid or base constituents by weight, and are treated in tanks or containers and piping, constructed of materials compatible with the range of temperatures and pH levels, and subject to appropriate pH and temperature controls. If the waste contains more than 10 percent acid or base constituents by weight, the volume treated in a single batch at any one time shall not exceed 500 gallons.

(10) Treatment of spent cleaners and conditioners which are hazardous solely due to the presence of copper or copper compounds, subject to the following:

(A) The following requirements are met, in addition to all other requirements of this section:

(i) The waste stream does not contain more than 5000 ppm total copper.

(ii) The generator does not generate for treatment any more than 1000 gallons of the waste stream per month.

(iii) The treatment technologies employed are limited to those set forth in paragraph (1) for metallic wastes.

(iv) The generator keeps records documenting compliance with this subdivision, including records indicating the volume and concentration of wastes treated, and the management of related solutions which are not cleaners or conditioners.

(B) Cleaners and conditioners, for purposes of this paragraph, are solutions containing surfactants and detergents to remove dirt and foreign objects. Cleaners and conditioners do not include microetch, etchant, plating, or metal stripping solutions or solutions containing oxidizers, or any cleaner based on organic solvents.

(C) A grant of conditional authorization under this paragraph shall expire on January 1, 1998, unless extended by the department pursuant to this section.

(D) The department shall evaluate the treatment activities described in this paragraph and shall designate, by regulation, not later than January 1, 1997, those activities eligible for conditional authorization and those activities subject to permit-by-rule. In adopting regulations under this subparagraph, the department shall consider all of the following:

(i) The volume of waste being treated.

(ii) The concentration of the hazardous waste constituents.

(iii) The characteristics of the hazardous waste being treated.

(iv) The risks of the operation, and breakdown, of the treatment process.

(11) Any waste stream technology combination certified by the department, pursuant to Section 25200.1.5, as suitable for authorization pursuant to this section, that operates pursuant to the conditions imposed on that certification.

(b) Any treatment performed pursuant to this section shall comply with all of the following, except as to generators, who are treating hazardous waste pursuant to paragraph (11) of subdivision (a), who shall also comply with any additional conditions of the specified certification if those conditions are different from those set forth in this subdivision:

(1) The total volume of hazardous waste treated in the unit in any calendar month shall not exceed 5,000 gallons or 45,000 pounds, whichever is less, unless the waste is a dilute aqueous waste described in paragraph (1), (2), or (9) of subdivision (a) or oily wastes as described in paragraph (8) of subdivision (a). The department may, by regulation, impose volume limitations on wastes which have no limitations under this section, as may be necessary to protect human health and safety or the environment.

(2) The treatment is conducted in tanks or containers.

(3) The treatment does not consist of the use of any of the following:

(A) Chemical additives, except for pH adjustment, chrome reduction, oil/water separation, and precipitation with the use of flocculants, as allowed by this section.

(B) Radiation.

(C) Electrical current except in the use of electrowinning, as allowed by this section.

(D) Pressure, except for reverse osmosis, filtration, and crushing, as allowed by this section.

(E) Application of heat, except for drying to remove water or demulsification, as allowed by this section.

(4) All treatment residuals and effluents are managed and disposed of in accordance with applicable federal, state, and local requirements.

(5) The treatment process does not do either of the following:

(A) Result in the release of hazardous waste into the environment as a means of treatment or disposal.

(B) Result in the emission of volatile hazardous waste constituents or toxic air contaminants, unless the emission is in compliance with the rules and regulations of the air pollution control district or air quality management district.

(6) The generator unit complies with any additional requirements set forth in regulations adopted pursuant to this section.

(c) A generator operating pursuant to subdivision (a) shall comply with all of the following requirements:

(1) Except as provided in paragraph (4), the generator shall comply with the standards applicable to generators specified in Chapter 12 (commencing with Section 66262.10) of Division 4.5 of Title 22 of the California Code of Regulations and with the applicable requirements in Sections 66265.12, 66265.14, and 66265.17 of Title 22 of the California Code of Regulations.

(2) The generator shall comply with Section 25202.9 by making an annual waste minimization certification.

(3) The generator shall comply with the environmental assessment procedures required pursuant to subdivisions (a) to (e), inclusive, of Section 25200.14. If that assessment reveals that there is contamination resulting from the release of hazardous waste or constituents from a solid waste management unit or a hazardous waste management unit at the generator's facility, regardless of the time at which the waste was released, the generator shall take every action necessary to expeditiously remediate that contamination, if the contamination presents a substantial hazard to human health and safety or the environment or if the generator is required to take corrective action by the department. If a facility is remediating the contamination pursuant to, and in compliance with the provisions of, an order issued by a California regional water quality control board or other state or federal environmental enforcement agency, that remediation shall be adequate for the purposes of complying with this section, as the remediation pertains to the jurisdiction of the ordering agency. This paragraph does not limit the authority of the department or a unified program agency pursuant to Section 25187 as may be necessary to protect human health and safety or the environment.

(4) The generator unit shall comply with container and tank standards applicable to non-RCRA wastes, unless otherwise required by federal law, specified in subdivisions (a) and (b) of Section 66264.175 of Title 22 of the California Code of Regulations, as the standards apply to container storage and transfer activities, and to Article 9 (commencing with Section 66265.170) and Article 10 (commencing with Section 66265.190) of Chapter 15 of Division 4.5 of Title 22 of the California Code of Regulations, except for Section 66265.197 of Title 22 of the California Code of Regulations.

(A) Unless otherwise required by federal law, ancillary equipment for a tank or container treating hazardous wastes solely pursuant to this section, is not subject to Section 66265.193 of Title 22

of the California Code of Regulations, if the ancillary equipment's integrity is attested to, pursuant to Section 66265.191 of Title 22 of the California Code of Regulations, every two years from the date that retrofitting requirements would otherwise apply.

(B) (i) The Legislature hereby finds and declares that in the case of underground, gravity-pressured sewer systems, integrity testing is often not feasible.

(ii) The best feasible leak detection measures which are sufficient to ensure that underground gravity-pressured sewer systems, for which it is not feasible to conduct integrity testing, do not leak.

(iii) If it is not feasible for an operator's ancillary equipment, or a portion thereof, to undergo integrity testing, the operator shall not be subject to Section 66265.193 of Title 22 of the California Code of Regulations, if the operator implements the best feasible leak detection measures which are determined to be sufficient by the department in those regulations, and those leak detection measures do not reveal any leaks emanating from the operator's ancillary equipment. Any ancillary equipment found to leak shall be retrofitted by the operator to meet the secondary containment standards of Section 66265.196 of Title 22 of the California Code of Regulations.

(5) The generator shall prepare and maintain a written inspection schedule and a log of inspections conducted.

(6) The generator shall prepare and maintain written operating instructions and a record of the dates, concentrations, amounts, and types of waste treated. Records maintained to comply with the state, federal, or local programs may be used to satisfy this requirement, to the extent that those documents substantially comply with the requirements of this section. The operating instructions shall include, but not be limited to, directions regarding all of the following:

(A) How to operate the treatment unit and carry out waste treatment.

(B) How to recognize potential and actual process upsets and respond to them.

(C) When to implement the contingency plan.

(D) How to determine if the treatment has been efficacious.

(E) How to address the residuals of waste treatment.

(7) The generator shall maintain adequate records to demonstrate to the department and the unified program agency that the requirements and conditions of this section are met, including compliance with all applicable pretreatment standards and with all applicable industrial waste discharge requirements issued by the agency operating the publicly owned treatment works into which the wastes are discharged. The records shall be maintained onsite for a period of five years.

(8) The generator shall treat only hazardous waste which is generated onsite. For purposes of this chapter, a residual material

from the treatment of a hazardous waste generated offsite is not a waste that has been generated onsite.

(9) Except as provided in Section 25404.5, the generator shall submit a fee to the State Board of Equalization in the amount required by Section 25205.14, unless the generator is subject to a fee under a permit-by-rule. The generator shall submit that fee within 30 days of the date that the fee is assessed by the State Board of Equalization.

(d) Notwithstanding any other provision of law, the following activities are ineligible for conditional authorization:

(1) Treatment in any of the following units:

(A) Landfills.

(B) Surface impoundments.

(C) Injection wells.

(D) Waste piles.

(E) Land treatment units.

(2) Commingling of hazardous waste with any hazardous waste that exceeds the concentration limits or pH limits specified in subdivision (a), or diluting hazardous waste in order to meet the concentration limits or pH limits specified in subdivision (a).

(3) Treatment using a treatment process not specified in subdivision (a).

(4) Pretreatment or posttreatment activities not specified in subdivision (a).

(5) Treatment of any waste which is reactive or extremely hazardous.

(e) (1) Not less than 60 days prior to commencing the first treatment of hazardous waste under this section, the generator shall submit a notification, in person or by certified mail, with return receipt requested, to the department and to one of the following:

(A) The CUPA, if the generator is under the jurisdiction of a CUPA.

(B) If the generator is not under the jurisdiction of a CUPA, the notification shall be submitted to the officer or agency authorized, pursuant to subdivision (f) of Section 25404.3, to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404.

(2) Upon demonstration of good cause by the generator, the department may allow a shorter time period, than the 60 days required by paragraph (1), between notification and commencement of hazardous waste treatment pursuant to this section.

(3) Each notification submitted pursuant to this subdivision shall be completed, dated, and signed according to the requirements of Section 66270.11 of Title 22 of the California Code of Regulations, as those requirements that were in effect on January 1, 1996, and apply to hazardous waste facilities permit applications, shall be on a form

prescribed by the department, and shall include, but not be limited to, all of the following information:

(A) The name, identification number, site address, mailing address, and telephone number of the generator to whom the conditional authorization is granted.

(B) A description of the physical characteristics and chemical composition of the hazardous waste to which the conditional authorization applies.

(C) A description of the hazardous waste treatment activity to which the conditional authorization applies, including the basis for determining that a hazardous waste facilities permit is not required under the federal act.

(D) A description of the characteristics and management of any treatment residuals.

(E) Documentation of any convictions, judgments, settlements, or orders resulting from an action by any local, state, or federal environmental or public health enforcement agency concerning the operation of the facility within the last three years, as the documents would be available under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) or the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of the Civil Code). For purposes of this paragraph, a notice of violation for any local, state, or federal agency does not constitute an order and a generator is not required to report the notice unless the violation is not corrected and the notice becomes a final order.

(f) Any generator operating pursuant to a grant of conditional authorization shall comply with all regulations adopted by the department relating to generators of hazardous waste.

(g) (1) Upon terminating operation of any treatment process or unit conditionally authorized pursuant to this section, the generator conducting treatment pursuant to this section shall remove or decontaminate all waste residues, containment system components, soils, and structures or equipment contaminated with hazardous waste from the unit. The removal of the unit from service shall be conducted in a manner that does both of the following:

(A) Minimizes the need for further maintenance.

(B) Eliminates the escape of hazardous waste, hazardous constituents, leachate, contaminated runoff, or waste decomposition products to the environment after the treatment process is no longer in operation.

(2) Any generator conducting treatment pursuant to this section who permanently ceases operation of a treatment process or unit that is conditionally authorized pursuant to this section shall, upon completion of all activities required under this subdivision, provide written notification, in person or by certified mail, with return receipt requested, to the department and to one of the following:

(A) The CUPA, if the generator is under the jurisdiction of a CUPA.

(B) If the generator is not under the jurisdiction of a CUPA, the notification shall be submitted to the officer or agency authorized, pursuant to subdivision (f) of Section 25404.3, to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404.

(h) In adopting regulations pursuant to this section, the department may impose any further restrictions or limitations consistent with the conditionally authorized status conferred by this section which are necessary to protect human health and safety and the environment.

(i) The department may revoke any conditional authorization granted pursuant to this section. The department shall base a revocation on any one of the causes set forth in subdivision (a) of Section 66270.43 of Title 22 of the California Code of Regulations or in Section 25186, or upon a finding that operation of the facility in question will endanger human health and safety, domestic livestock, wildlife, or the environment. The department shall conduct the revocation of a conditional authorization granted pursuant to this section in accordance with Chapter 21 (commencing with Section 66271.1) of Division 4.5 of Title 22 of the California Code of Regulations and as specified in Section 25186.7.

(j) A generator who would otherwise be subject to this section may contract with the operator of a transportable treatment unit who is operating pursuant to a permit-by-rule, a standardized permit, or a full state hazardous waste facilities permit to treat the generator's waste. If treatment of the generator's waste takes place under such a contract, the generator is not otherwise subject to the requirements of this section, but shall comply with all other requirements of this chapter that apply to generators. The operator of the transportable treatment unit that performs onsite treatment pursuant to this subdivision shall comply with all requirements applicable to transportable treatment units operating pursuant to a permit-by-rule, as set forth in the regulations adopted by the department.

(k) (1) Within 30 days of any change in operation which necessitates modifying any of the information submitted in the notification required pursuant to subdivision (e), a generator shall submit an amended notification, in person or by certified mail, with return receipt requested, to the department and to one of the following:

(A) The CUPA, if the generator is under the jurisdiction of a CUPA.

(B) If the generator is not under the jurisdiction of a CUPA, the notification shall be submitted to the officer or agency authorized, pursuant to subdivision (f) of Section 25404.3, to implement and

enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404.

(2) Each amended notification shall be completed, dated, and signed in accordance with the requirements of Section 66270.11 of Title 22 of the California Code of Regulations, as those requirements apply to hazardous waste facilities permit applications.

(*l*) A person who has submitted a notification to the department pursuant to subdivision (e) shall be deemed to be operating pursuant to this section, and, except as provided in Section 25404.5, shall be subject to the fee set forth in subdivision (a) of Section 25205.14 until that person submits a certification that the generator has ceased all treatment activities of hazardous waste streams authorized pursuant to this section in accordance with the requirements of subdivision (g). The certification required by this subdivision shall be submitted, in person or by certified mail, with return receipt requested, to the department and to one of the following:

(1) The CUPA, if the generator is under the jurisdiction of a CUPA.

(2) If the generator is not under the jurisdiction of a CUPA, the notification shall be submitted to the officer or agency authorized, pursuant to subdivision (f) of Section 25404.3, to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404.

(m) The development and publication of the notification form specified in subdivision (e) is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The department shall hold at least one public workshop concerning the development of the notification form.

SEC. 4. Section 25201.5 of the Health and Safety Code is amended to read:

25201.5. (a) Notwithstanding any other provision of law, a hazardous waste facilities permit is not required for a generator who treats hazardous waste of a total weight of not more than 500 pounds, or a total volume of not more than 55 gallons, in any calendar month, if both of the following conditions are met:

(1) The hazardous waste is not an extremely hazardous waste and is listed in Section 67450.11 of Title 22 of the California Code of Regulations, as in effect on January 1, 1992, as eligible for treatment pursuant to the regulations adopted by the department for operation under a permit-by-rule and the treatment technology used is approved for that waste stream in Section 67450.11 of Title 22 of the California Code of Regulations for treatment under a permit-by-rule.

(2) The generator is not otherwise required to obtain a hazardous waste facilities permit or other grant of authorization for any other hazardous waste management activity at the facility.

(b) Notwithstanding any other provision of law, treatment in the following units is ineligible for exemption pursuant to subdivision (a) or (c):

(1) Landfills.
(2) Surface impoundments.
(3) Injection wells.
(4) Waste piles.
(5) Land treatment units.
(6) Thermal destruction units.

(c) Notwithstanding any other provision of law, a hazardous waste facilities permit or other grant of authorization is not required to conduct the following treatment activities, if the generator treats the following hazardous waste streams using the treatment technology required by this subdivision:

(1) The generator mixes or cures resins mixed in accordance with the manufacturer's instructions, including the mixing or curing of multicomponent and preimpregnated resins in accordance with the manufacturer's instructions.

(2) The generator treats a container of 110 gallons or less capacity, which is not constructed of wood, paper, cardboard, fabric, or any other similar absorptive material, for the purposes of emptying the container as specified by Section 66261.7 of Title 22 of the California Code of Regulations, as revised July 1, 1990, or treats the inner liners removed from empty containers that once held hazardous waste or hazardous material. The generator shall treat the container or inner liner by using the following technologies, if the treated containers and rinseate are managed in compliance with the applicable requirements of this chapter:

(A) The generator rinses the container or inner liner with a suitable liquid capable of dissolving or removing the hazardous constituents which the container held.

(B) The generator uses physical processes, such as crushing, shredding, grinding, or puncturing, that change only the physical properties of the container or inner liner, if the container or inner liner is first rinsed as provided in subparagraph (A) and the rinseate is removed from the container or inner liner.

(3) The generator conducts drying by pressing or by passive or heat-aided evaporation to remove water from wastes classified as special wastes by the department pursuant to Section 66261.124 of Title 22 of the California Code of Regulations.

(4) The generator conducts magnetic separation or screening to remove components from wastes classified as special wastes by the department pursuant to Section 66261.124 of Title 22 of the California Code of Regulations.

(5) The generator neutralizes acidic or alkaline wastes which are hazardous solely due to corrosivity or toxicity resulting from the presence of acidic or alkaline material from food or food byproducts, and alkaline or acidic waste, other than wastes containing nitric acid, at SIC Code Major Group 20, food and kindred product facilities, as defined in subdivision (p) of Section 25501, if both of the following conditions are met:

(A) The neutralization process does not result in the emission of volatile hazardous waste constituents or toxic air contaminants.

(B) The neutralization process is required in order to meet discharge or other regulatory requirements.

(6) Except as provided for specific waste streams in Section 25200.3, the generator conducts the separation by gravity of the following, if the activity is conducted in impervious tanks or containers constructed of noncorrosive materials, the activity does not involve the addition of heat or other form of treatment, or the addition of chemicals other than flocculants and demulsifiers, and the activity is managed in compliance with applicable requirements of federal, state, or local agency or treatment works:

(A) The settling of solids from waste where the resulting aqueous stream is not hazardous.

(B) The separation of oil/water mixtures and separation sludges, if the average oil recovered per month is less than 25 barrels.

(7) The generator is a laboratory which is certified by the State Department of Health Services or operated by an educational institution, and treats wastewater generated onsite solely as a result of analytical testing, or is a laboratory which treats less than one gallon of hazardous waste, which is generated onsite, in any single batch, subject to the following:

(A) The wastewater treated is hazardous solely due to corrosivity or toxicity that results only from the acidic or alkaline material, as defined in Section 66260.10 of Title 22 of the California Code of Regulations, or is excluded from the definition of hazardous waste by subparagraph (E) of paragraph (2) of subsection (a) of Section 66261.3 of Title 22 of the California Code of Regulations, or both.

(B) The treatment meets all of the following requirements, in addition to all other requirements of this section:

(i) The treatment complies with all applicable pretreatment requirements.

(ii) Neutralization occurs in elementary neutralization units, as defined in Section 66260.10 of Title 22 of the California Code of Regulations; wastes to be neutralized do not contain any more than 10 percent acid or base concentration by weight, or any other concentration limit which may be imposed by the department; and vessels and piping for neutralization are constructed of materials that are compatible with the range of temperatures and pH levels, and subject to appropriate pH temperature controls.

(iii) Treatment does not result in the emission of volatile hazardous waste constituents or toxic air contaminants.

(8) The hazardous waste treatment is carried out in a quality control or quality assurance laboratory at a facility that is not an offsite hazardous waste facility and the treatment activity otherwise meets the requirements of paragraph (1) of subdivision (a).

(9) Any waste stream technology combination certified by the department, pursuant to Section 25200.1.5, as suitable for

authorization pursuant to this section, that operates pursuant to the conditions imposed on that certification.

(10) The generator uses any technology that is certified by the department, pursuant to Section 25200.1.5, as effective for the treatment of formaldehyde or glutaraldehyde solutions used in health care facilities that are operated pursuant to the conditions imposed on the certification and which makes the operation appropriate to this tier. The technology may be certified using a pilot certification process until the department adopts regulations pursuant to Section 25200.1.5. This paragraph shall be operative only until April 11, 1996.

(d) A generator conducting treatment pursuant to subdivision (a) or (c) shall meet all of the following conditions:

(1) The waste being treated is generated onsite, and a residual material from the treatment of a hazardous waste generated offsite is not a waste that has been generated onsite.

(2) The treatment does not require a hazardous waste facilities permit pursuant to the federal act.

(3) The generator prepares and maintains written operating instructions and a record of the dates, amounts, and types of waste treated.

(4) The generator prepares and maintains a written inspection schedule and log of inspections conducted.

(5) The records specified in paragraphs (3) and (4) are maintained onsite for a period of three years.

(6) The generator maintains adequate records to demonstrate that it is in compliance with all applicable pretreatment standards and with all applicable industrial waste discharge requirements issued by the agency operating the publicly owned treatment works into which the wastes are discharged.

(7) (A) Not less than 60 days before commencing treatment of hazardous waste pursuant to this section, the generator shall submit a notification, in person or by certified mail, with return receipt requested, to the department and to one of the following:

(i) The CUPA, if the generator is under the jurisdiction of a CUPA.

(ii) If the generator is not under the jurisdiction of a CUPA, the notification shall be submitted to the officer or agency authorized, pursuant to subdivision (f) of Section 25404.3, to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404.

(B) Upon demonstration of good cause by the generator, the department may allow a shorter time period, than the 60 days required by subparagraph (A), between notification and commencement of hazardous waste treatment pursuant to this section.

(C) The notification submitted pursuant to this paragraph shall be completed, dated, and signed in accordance with the requirements of Section 66270.11 of Title 22 of the California Code of Regulations,

as those requirements apply to permit applications, shall be on a form prescribed by the department, and shall include, but not be limited to, all of the following information:

(i) The name, identification number, site address, mailing address, and telephone number of the generator to whom the conditional exemption applies.

(ii) A description of the physical characteristics and chemical composition of the hazardous waste to which the conditional exemption applies.

(iii) A description of the hazardous waste treatment activity to which the conditional exemption applies, including, but not limited to, the basis for determining that a hazardous waste facilities permit is not required under the federal act.

(iv) A description of the characteristics and management of any treatment residuals.

(D) The development and publication of the notification form required under this paragraph is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The department shall hold at least one public workshop concerning the development of the notification form.

(E) Any notification submitted pursuant to this paragraph shall supersede any prior notice of intent submitted by the same generator in order to obtain a permit-by-rule under the regulations adopted by the department. This subparagraph does not require the department to refund any fees paid for any application in conjunction with the submission of a notice of intent for a permit-by-rule.

(8) (A) Upon terminating operation of any treatment process or unit exempted pursuant to this section, the generator who conducted the treatment shall remove or decontaminate all waste residues, containment system components, soils, and other structures or equipment contaminated with hazardous waste from the unit. The removal of the unit from service shall be conducted in a manner that does both of the following:

(i) Minimizes the need for further maintenance.

(ii) Eliminates the escape of hazardous waste, hazardous constituents, leachate, contaminated runoff, or waste decomposition products to the environment after treatment process is no longer in operation.

(B) Any owner or operator who permanently ceases operation of a treatment process or unit that is conditionally exempted pursuant to this section shall, upon completion of all activities required under this subdivision, provide written notification in person or by certified mail, with return receipt requested, to the department and to one of the following:

(i) The CUPA, if the generator is under the jurisdiction of a CUPA.

(ii) If the generator is not under the jurisdiction of a CUPA, the notification shall be submitted to the officer or agency authorized, pursuant to subdivision (f) of Section 25404.3, to implement and

enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404.

(9) The waste is managed in accordance with all applicable requirements for generators of hazardous waste under this chapter and the regulations adopted by the department pursuant to this chapter.

(10) Except as provided in Section 25404.5, the generator submits a fee in the amount required by Section 25205.14, unless the generator is subject to a fee under a permit-by-rule or a grant of conditional authorization pursuant to Section 25200.3. The generator shall submit that fee within 30 days of the date that the fee is assessed by the State Board of Equalization, in the manner specified by Section 43152.10 of the Revenue and Taxation Code.

(e) (1) Unless otherwise required by federal law, ancillary equipment for a tank or container treating hazardous wastes solely pursuant to this section is not subject to Section 66265.193 of Title 22 of the California Code of Regulations, if the ancillary equipment's integrity is attested to pursuant to Section 66265.191 of Title 22 of the California Code of Regulations every two years from the date that retrofitting requirements would otherwise apply.

(2) (A) The Legislature hereby finds and declares that, in the case of underground, gravity-pressured sewer systems, integrity testing is often not feasible.

(B) The department shall, by regulation, determine the best feasible leak detection measures which are sufficient to ensure that underground gravity-pressured sewer systems, for which it is not feasible to conduct integrity testing, do not leak.

(C) If it is not feasible for an operator's ancillary equipment, or a portion thereof, to undergo integrity testing, the operator shall not be subject to Section 66265.193 of Title 22 of the California Code of Regulations, if the operator implements the best feasible leak detection measures that are determined to be sufficient by the department in those regulations, and those leak detection measures do not reveal any leaks emanating from the operator's ancillary equipment. Any ancillary equipment found to leak shall be retrofitted by the operator to meet the full secondary containment standards of Section 66265.196 of Title 22 of the California Code of Regulations.

(f) Nothing in this section shall abridge any authority granted to the department, a unified program agency, or local health officer or local public officer designated pursuant to Section 25180, by any other provision of law to impose any further restrictions or limitations upon facilities subject to this section, that the department, a unified program agency, or local health officer or local public officer designated pursuant to Section 25180, determines to be necessary to protect human health or the environment.

(g) A generator that would otherwise be subject to this section may contract with the operator of a transportable treatment unit who

is operating pursuant to this section to treat the generator's waste. If treatment of the generator's waste takes place under such a contract, the generator is not otherwise subject to the requirements of this section, but shall comply with all other requirements of this chapter that apply to generators. The operator of the transportable treatment unit shall comply with all of the applicable requirements of this section and, for purposes of this section, the operator of the transportable treatment unit shall be deemed to be the generator.

(h) A generator conducting activities which are exempt from this chapter pursuant to Section 66261.7 of Title 22 of the California Code of Regulations, as that section read on January 1, 1993, is not required to comply with this section.

(i) (1) Within 30 days of any change in operation which necessitates modifying any of the information submitted in the notification required pursuant to paragraph (7) of subdivision (d), a generator shall submit an amended notification, in person or by certified mail, with return receipt requested, to the department and to one of the following:

(A) The CUPA, if the generator is under the jurisdiction of a CUPA.

(B) If the generator is not under the jurisdiction of a CUPA, the notification shall be submitted to the officer or agency authorized, pursuant to subdivision (f) of Section 25404.3, to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404.

(2) Each amended notification made pursuant to this subdivision shall be completed, dated, and signed in accordance with the requirements of Section 66270.11 of Title 22 of the California Code of Regulations, as those requirements apply to hazardous waste facilities permit applications.

(j) A person who submitted a notification to the department pursuant to paragraph (7) of subdivision (d) shall be deemed to be operating pursuant to this section, and, except as provided in Section 25404.5, shall be subject to the fee set forth in subdivision (c) of Section 25205.14 until that person submits a certification that the generator has ceased all treatment activities of hazardous waste streams authorized pursuant to this section in accordance with the requirements of paragraph (8) of subdivision (d). The certification required by this subdivision shall be submitted, in person or by certified mail, with return receipt requested, to the department and to one of the following:

(1) The CUPA, if the generator is under the jurisdiction of a CUPA.

(2) If the generator is not under the jurisdiction of a CUPA, the notification shall be submitted to the officer or agency authorized, pursuant to subdivision (f) of Section 25404.3, to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404.

SEC. 5. Section 25201.5.1 of the Health and Safety Code is repealed.

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 that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 310

An act to amend Section 2290.5 of the Business and Professions Code, to amend Sections 11019, 95001, 95007, 95012, 95016, 95018, and 95020 of the Government Code, to amend Sections 1179.2, 1179.3, 1265.5, 100171, 101230, 101300, 101305, 103640, 123975, 125000, and 125070 of, to add Sections 1179.5, 1250.05, 104569, and 124560 to, to add Article 6.5 (commencing with Section 124115) to Chapter 3 of Part 2 of Division 106 of, and to add Chapter 4 (commencing with Section 53250) to Part 4 of Division 31 of, the Health and Safety Code, to amend Section 12693.95 of, and to add Chapter 16.1 (commencing with Section 12693.98) to Part 6.2 of Division 2 of, the Insurance Code, to amend Sections 4434, 4596.5, 4629, 4631, 4635, 4640.6, 4681.3, 4690.2, 4691.5, 4701, 4702.6, 4704, 4704.5, 4705, 4710.5, 4710.6, 4710.7, 4710.8, 4711, 4712, 4712.5, 4715, 14005.8, 14016.5, 14067, 14100.7, 14105.31, 14105.33, 14105.35, 14105.37, 14105.38, 14105.39, 14105.4, 14105.405, 14105.41, 14105.42, 14105.91, 14105.915, 14105.916, 14124.70, 14124.72, 14124.74, 14124.75, 14124.78, 14132.44, 14132.47, 14132.72, and 14163 of, to add Sections 4433.5, 4511, 4513, 4681.4, 4681.5, 4690.3, 4690.4, 4706, 4707, 4711.5, 4711.7, 4712.7, 5328.35, 5586, 5587, 11265.9, 14016.55, 14100.8, and 14100.9 to, to add Article 4.5 (commencing with Section 14145) to Chapter 7 of Part 3 of Division 9 of, to add and repeal Sections 14093.88 and 16809.45 of, to repeal Sections 14005.82, 14005.83, and 14016.11 of, and to repeal and add Sections 4710.9, 14005.30, and 14005.81 of, the Welfare and Institutions Code, relating to health, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 18, 1998. Filed with Secretary of State August 19, 1998.]

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

SECTION 1. Section 2290.5 of the Business and Professions Code is amended to read:

2290.5. (a) (1) For the purposes of this section, "telemedicine" means the practice of health care delivery, diagnosis, consultation, treatment, transfer of medical data, and education using interactive audio, video, or data communications. Neither a telephone conversation nor an electronic mail message between a health care practitioner and patient constitutes "telemedicine" for purposes of this section.

(2) For purposes of this section, "interactive" means an audio, video, or data communication involving a real time (synchronous) or near real time (asynchronous) two-way transfer of medical data and information.

(b) For the purposes of this section, "health care practitioner" has the same meaning as "licentiate" as defined in paragraph (2) of subdivision (a) of Section 805.

(c) Prior to the delivery of health care via telemedicine, the health care practitioner who has ultimate authority over the care or primary diagnosis of the patient shall obtain verbal and written informed consent from the patient or the patient's legal representative. The informed consent procedure shall ensure that at least all of the following information is given to the patient or the patient's legal representative verbally and in writing:

(1) The patient or the patient's legal representative retains the option to withhold or withdraw consent at any time without affecting the right to future care or treatment nor risking the loss or withdrawal of any program benefits to which the patient or the patient's legal representative would otherwise be entitled.

(2) A description of the potential risks, consequences, and benefits of telemedicine.

(3) All existing confidentiality protections apply.

(4) All existing laws regarding patient access to medical information and copies of medical records apply.

(5) Dissemination of any patient identifiable images or information from the telemedicine interaction to researchers or other entities shall not occur without the consent of the patient.

(d) A patient or the patient's legal representative shall sign a written statement prior to the delivery of health care via telemedicine, indicating that the patient or the patient's legal representative understands the written information provided pursuant to subdivision (a), and that this information has been discussed with the health care practitioner, or his or her designee.

(e) The written consent statement signed by the patient or the patient's legal representative shall become part of the patient's medical record.

(f) The failure of a health care practitioner to comply with this section shall constitute unprofessional conduct. Section 2314 shall not apply to this section.

(g) All existing laws regarding surrogate decisionmaking shall apply. For purposes of this section, "surrogate decisionmaking" means any decision made in the practice of medicine by a parent or legal representative for a minor or an incapacitated or incompetent individual.

(h) Except as provided in paragraph (3) of subdivision (c), this section shall not apply when the patient is not directly involved in the telemedicine interaction, for example when one health care practitioner consults with another health care practitioner.

(i) This section shall not apply in an emergency situation in which a patient is unable to give informed consent and the representative of that patient is not available in a timely manner.

(j) This section shall not apply to a patient under the jurisdiction of the Department of Corrections or any other correctional facility.

(k) This section shall not be construed to alter the scope of practice of any health care provider or authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law.

SEC. 2. Section 11019 of the Government Code is amended to read:

11019. (a) Any department or authority specified in subdivision (b) may, upon determining that an advance payment is essential for the effective implementation of a program within the provisions of this section, and to the extent funds are available, advance to a community-based private nonprofit agency with which it has contracted, pursuant to federal law and related state law, for the delivery of services, not to exceed 25 percent of the annual allocation to be made pursuant to the contract and those laws, during the fiscal year to the private nonprofit agency. Advances in excess of 25 percent may be made on contracts financed by a federal program when the advances are not prohibited by federal guidelines. Advance payments may be provided for services to be performed under any contract with a total annual contract amount of four hundred thousand dollars ($400,000) or less. This amount shall be increased by 5 percent, as determined by the Department of Finance, for each year commencing with 1989. Advance payments may also be made with respect to any contract which the Department of Finance determines has been entered into with any community-based private nonprofit agency with modest reserves and potential cash-flow problems. No advance payment shall be granted if the total annual contract exceeds four hundred thousand dollars ($400,000), without the prior approval of the Department of Finance.

The specific departments and authority mentioned in subdivision (b) shall develop a plan to establish control procedures for advance payments. Each plan shall include a procedure whereby the

department or authority determines whether or not an advance payment is essential for the effective implementation of a particular program being funded. Each plan is required to be approved by the Department of Finance.

(b) Subdivision (a) shall apply to the Emergency Medical Service Authority, the California Department of Aging, the State Department of Developmental Services, the State Department of Alcohol and Drug Programs, the Department of Corrections, the Department of Economic Opportunity, the Employment Development Department, the State Department of Health Services, the State Department of Mental Health, the Department of Rehabilitation, the State Department of Social Services, the Department of the Youth Authority, the State Department of Education, the area boards on developmental disabilities, the Organization of Area Boards, the Office of Statewide Health Planning and Development, and the California Environmental Protection Agency, including all boards and departments contained therein.

Subdivision (a) shall also apply to the Health and Welfare Agency which may make advance payments, pursuant to the requirements of that subdivision, to multipurpose senior services projects as established in Sections 9400 to 9413, inclusive, of the Welfare and Institutions Code.

(c) A county may, upon determining that an advance payment is essential for the effective implementation of a program within the provisions of this section, and to the extent funds are available, and not more frequently than once each fiscal year, advance to a community-based private nonprofit agency with which it has contracted, pursuant to any applicable federal or state law, for the delivery of services, not to exceed 25 percent of the annual allocation to be made pursuant to the contract and those laws, during the fiscal year to the private nonprofit agency.

SEC. 3. Section 95001 of the Government Code is amended to read:

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 a family-centered, comprehensive, multidisciplinary, interagency community-based, early intervention system 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.

SEC. 4. Section 95007 of the Government Code is amended to read:

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) (1) Monitoring of agencies, institutions, and organizations receiving assistance under this title.

(2) Monitoring shall be conducted by interagency teams that are sufficiently trained to ensure compliance. Interagency teams shall consist of, but not be limited to, representatives from the State Department of Developmental Services, the State Department of Education, the interagency coordinating council, or a local family resource center or network parent, direct service provider, or any other agency responsible for providing early intervention services.

(3) All members of an interagency team shall have access to all information that is subject to review. Members of each interagency team shall maintain the confidentiality of the information, and each member of the interagency team shall sign a written agreement of confidentiality.

(4) A summary of monitoring issues and findings shall be forwarded biannually to the interagency coordinating council for review.

(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.

SEC. 5. Section 95012 of the Government Code is amended to read:

95012. (a) The following departments shall cooperate and coordinate their early intervention services for eligible infants and their families under this title, and need to collaborate with families and communities, to provide a family-centered, comprehensive, multidisciplinary, interagency, community-based early intervention system:

(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.

SEC. 6. Section 95016 of the Government Code is amended to read:

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. In the process of determining eligibility of an infant or toddler, an assessment shall be conducted by qualified personnel, and shall include a family interview, 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. Evaluations and assessments shall be shared and utilized between the regional center and the local education agency, and any other agency providing services for the eligible infant or toddler, as appropriate. Family assessments shall be family directed and voluntary on the part of the family. Families shall be afforded the opportunity to participate in all decisions regarding eligibility and services.

(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.

SEC. 7. Section 95018 of the Government Code is amended to read:

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. The State Department of Developmental Services shall ensure that service coordinators, as defined in federal law, meet federal and state regulation requirements, are trained to work with infants and their families, and meet competency requirements set forth in subsection (d) of Section 303.22 of Title 34 of the Code of Federal Regulations. Service coordinator caseloads shall be an overall average of 62 consumers to each staff member. 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.

SEC. 8. Section 95020 of the Government Code is amended to read:

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 share the results of the evaluation, to determine eligibility and, for children who are eligible, to develop the initial individualized family service plan shall be conducted within 45

calendar days of receipt of the written referral. Evaluation results and determination of eligibility may be shared in a meeting with the family prior to the individualized family service plan. 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. Families shall be afforded the opportunity to participate in all decisions regarding eligibility and services.

(c) Parents shall be fully informed of their rights, including the right to invite any other person, including a family member or an advocate or peer parent, or any or all of them, to accompany them to any or all individualized family service plan meetings. With parental consent, a referral shall be made to the local family resource center or network.

(d) 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.

(e) 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.

(f) 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.

SEC. 9. Section 1179.2 of the Health and Safety Code is amended to read:

1179.2. (a) The Health and Welfare Agency shall establish an interdepartmental Task Force on Rural Health to coordinate rural health policy development and program operations and to develop a strategic plan for rural health.

(b) At a minimum, the following state departmental directors, or their representatives, shall participate on this task force:

(1) The Director of Health Services.
(2) The Director of Statewide Health Planning and Development.
(3) The Director of Alcohol and Drug Programs.
(4) The Director of the Emergency Medical Services Authority.
(5) The Director of Mental Health.
(6) The Executive Director of the Managed Risk Medical Insurance Board.

(c) The task force shall review and direct the activities of the Office of Rural Health or the alternative organizational structure, as determined by the Secretary of the Health and Welfare Agency.

(d) The task force shall establish appropriate mechanisms, such as ad hoc or standing advisory committees or the holding of public hearings in rural communities for the purpose of soliciting and receiving input from these communities, including input from rural hospitals, rural clinics, health care service plans, local governments, academia, and consumers.

(e) By May 1, 1996, the Secretary of the Health and Welfare Agency shall report to the Chair of the Joint Legislative Budget Committee and the Chairs of the Senate and Assembly Health Committees, and at that time submit the strategic plan developed by the task force. This strategic plan may include but shall not be limited to the following elements:

(1) The status of establishing an Office of Rural Health or alternative organizational structure.

(2) The roles and responsibilities of that office or alternative organizational structure.

(3) The mechanism for ongoing input to the office or alternative organizational structure by members of the public, rural health care providers, rural hospitals, health care service plans, and local governments.

(4) The identification of all departments and agencies with significant program or funding responsibility for rural health care.

(5) A detailed plan to consolidate and coordinate the activities of the programs identified pursuant to paragraph (4) to better meet the health care needs of rural residents.

SEC. 10. Section 1179.3 of the Health and Safety Code is amended to read:

1179.3. (a) (1) The Rural Health Policy Council shall develop and administer a competitive grants program for projects located in rural areas of California.

(2) The Rural Health Policy Council shall define "rural area" for the purposes of this section after receiving public input and upon recommendation of the Interdepartmental Rural Health Coordinating Committee and the Rural Health Programs Liaison.

(3) The purpose of the grants program shall be to fund innovative, collaborative, cost-effective, and efficient projects that pertain to the delivery of health and medical services in rural areas of the state.

(4) The Rural Health Policy Council shall develop and establish uses for the funds to fund special projects that alleviate problems of access to quality health care in rural areas and to compensate public and private health care providers associated with direct delivery of patient care. The funds shall be used for medical and hospital care and treatment of patients who cannot afford to pay for services and for whom payment will not be made through private or public programs.

(5) The Office of Statewide Health Planning and Development shall administer the funds appropriated by the Budget Act of 1998 for purposes of this section. Entities eligible for these funds shall include rural health providers served by the programs operated by the departments represented on the Rural Health Policy Council, which include the State Department of Alcohol and Drug Programs, the Emergency Medical Services Authority, the State Department of Health Services, the State Department of Mental Health, the Office of Statewide Health Planning and Development, and the Managed Risk Medical Insurance Board. The grant funds shall be used to expand existing services or establish new services and shall not be used to supplant existing levels of service.

(b) The Rural Health Policy Council shall establish the criteria and standards for eligibility to be used in requests for proposals or requests for application, the application review process, determining the maximum amount and number of grants to be awarded, preference and priority of projects, compliance monitoring, and the measurement of outcomes achieved after receiving comment from the public at a meeting held pursuant to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

(c) The Office of Statewide Health Planning and Development shall periodically report to the Rural Health Policy Council on the status of the funded projects. This information shall also be available at the public meetings.

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

SEC. 11. Section 1179.5 is added to the Health and Safety Code, to read:

1179.5. (a) The Rural Health Policy Office within the Office of Statewide Health Planning and Development serving as staff to the Rural Health Policy Council shall develop an annual workplan which is adopted by the council. The workplan shall describe how the council shall meet specific, measurable performance objectives. The workplan shall be designed to further the goals of the Rural Health Policy Council to improve access to, and the quality of, health care in rural areas.

(b) The workplan required under subdivision (a) shall include information on how the council intends to address, at a minimum, all of the following topics:

(1) Increased standardization and consolidation of financial and statistical reporting, billing, audits, contracts, and budgets.

(2) Network delivery and integrated delivery systems.

(3) Streamlining the regulatory process.

(4) Assessing the impact of managed care in rural communities.

(5) Reviewing and proposing changes necessary to improve current funding issues.

(6) Increasing the use of technology.

(7) Supporting innovative efforts to improve patient transportation.

(8) Providing strategic planning for local communities.

(9) Improving communication between the state and rural providers.

(10) Increasing workforce availability in rural areas.

(c) The Rural Health Policy Council shall provide an annual report to the chairs of the fiscal and policy committees of the Legislature on the outcomes achieved by the office during the preceding 12 months and what changes it will incorporate into the workplan for the following year. The first report pursuant to this section shall be provided to the Legislature by February 1, 1999.

SEC. 12. Section 1250.05 is added to the Health and Safety Code, to read:

1250.05. (a) All general acute care hospitals licensed under this chapter shall maintain a medical records system, based upon current standards for medical record retrieval and storage, that organizes all medical records for each patient under a unique identifier.

(b) This section shall not require electronic records or require that all portions of patients' records be stored in a single location.

(c) In addition, all general acute care hospitals shall have the ability to identify the location of all portions of a patient's medical record that are maintained under the general acute care hospital's license.

(d) All general acute care hospitals, including those holding a consolidated general acute care license pursuant to Section 1250.8, shall develop and implement policies and procedures to ensure that relevant portions of patients' medical records can be made available within a reasonable period of time to respond to the request of a treating physician, other authorized medical professionals, authorized representatives of the department, or any other person authorized by law to make such a request, taking into consideration the physical location of the records and hours of operation of the facility where those records are located, as well as the best interests of the patients.

SEC. 13. Section 1265.5 of the Health and Safety Code is amended to read:

1265.5. (a) Prior to the initial licensure or renewal of a license of any person or persons to operate or manage an intermediate care facility/developmentally disabled habilitative, intermediate care facility/developmentally disabled nursing, or intermediate care facility/developmentally disabled, other than a state-operated intermediate care facility/developmentally disabled, or upon hiring any direct care staff, the state department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant, facility administrator or manager, any direct care staff, or any other adult living in the same location, has ever been convicted of a crime other than a minor traffic violation. Nothing in this section shall be construed to require a criminal record check of a person receiving services in an intermediate care facility/developmentally disabled habilitative, intermediate care facility/developmentally disabled nursing, or intermediate care facility/developmentally disabled.

(b) Subject to subdivision (c), the application for licensure or renewal shall be denied if the criminal record indicates that any person described in subdivision (a) has been convicted of a violation or attempted violation of any one or more of the following Penal Code provisions: Section 187, subdivision (a) of Section 192, Section 203, 205, 206, 207, 209, 210, 210.5, 211, 220, 222, 243.4, 245, 261, 262, or 264.1, Sections 265 to 267, inclusive, Section 273a, 273d, 273.5, or 285, subdivisions (c), (d), (f), and (g) of Section 286, Section 288, subdivisions (c), (d), (f), and (g) of Section 288a, Section 288.5, 289, 289.5, 368, 451, 459, 470, 475, 484, or 484b, Sections 484d to 484j, inclusive, Section 487, 488, 496, 503, 518, or 666.

(c) An application shall not be denied pursuant to subdivision (b), if any of the following applies:

(1) The person was convicted of a felony and has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of the Penal Code and the information or accusation against him or her has been dismissed pursuant to Section 1203.4 of the Penal Code.

(2) The person was convicted of a misdemeanor and the information or accusation against him or her has been dismissed pursuant to Section 1203.4 or 1203.4a of the Penal Code.

(3) The person was convicted of a felony or a misdemeanor, but has previously disclosed the fact of each conviction to the department, and the department has made a determination in accordance with law that the conviction does not disqualify the person.

(4) The application for licensure or renewal shall also be denied if the criminal record of the person includes a conviction in another state for an offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses set forth in subdivision (b), unless evidence of rehabilitation comparable to the certificate of rehabilitation or dismissal of a misdemeanor as set

forth in paragraph (1) or (2) of subdivision (b) is provided to the department.

(d) If the criminal record indicates any conviction other than a minor traffic violation or a conviction listed in subdivision (b), the department shall deny the application for licensure or renewal, unless it determines that the person has been rehabilitated, after consideration of the following factors:

(1) The nature and the seriousness of the crime under consideration.

(2) Evidence of conduct subsequent to the crime which suggests responsible or irresponsible character.

(3) The time which has elapsed since commission of the crime or conduct referred to in paragraph (1) or (2).

(4) The extent to which the person has complied with any terms of parole, probation, restitution, or any other sanction lawfully imposed against the applicant.

(5) Any rehabilitation evidence submitted by the person.

(e) For purposes of this section, "direct care staff" means all facility staff who are trained and experienced in the care of persons with developmental disabilities and who directly provide program and nursing services to clients. Administrative and licensed personnel shall be considered direct care staff when directly providing program and nursing services to clients.

(f) Upon employment of any person specified in subdivision (a), prior to any contact with patients or residents, the facility shall submit fingerprint cards to the department for the purpose of obtaining a criminal record check.

(g) Within five working days of the receipt of the criminal record or information from the Department of Justice, the department shall notify the licensee or applicant of any criminal convictions.

SEC. 14. Chapter 4 (commencing with Section 53250) is added to Part 4 of Division 31 of the Health and Safety Code, to read:

CHAPTER 4. CALIFORNIA STATEWIDE SUPPORTIVE HOUSING INITIATIVE ACT

53250. The Legislature finds and declares all of the following:

(a) Decent, affordable housing is an essential human need that relates directly to families and persons achieving self-sufficiency and maximizing their independence.

(b) The presence of homeless persons on our streets and the existence of unsafe, unsanitary housing constitute conditions that increase public health and safety problems.

(c) At least 150,000 people are homeless in California, and studies indicate that at least one-half are disabled with mental illness, medical problems, other health conditions, or other special needs.

(d) Very low income people with disabilities cycle through costly, short-term crisis programs, such as hospital emergency rooms,

psychiatric hospitalization, emergency shelters, and jails, and fail to make a long-term transition to stability and permanent housing.

(e) Evidence from around the country shows that a significant percentage of those who are trying to move from welfare to work face substantial barriers, including mental health and other health-related disabilities.

(f) Supportive housing, which blends affordable housing with necessary support and employment services, has been shown to be effective in stabilizing tenants so that they regain a stake in the community.

(g) Supportive housing has been shown to decrease by 50 percent the use of emergency medical services and incarceration, reduce recidivism among substance abusers by more than 50 percent, increase employment rates by 100 percent, and successfully retain tenants at rates exceeding 80 percent.

(h) Supportive housing has previously been developed and operated primarily with local government, federal government, philanthropic, and private sector support.

(i) Supportive housing is currently available to only one or two of every 10 Californians who could benefit from it.

(j) By establishing a supportive housing initiative, the state can leverage substantial local, federal, and private support, reduce costs, and ensure that existing supportive housing programs are sustained and that new supportive housing programs are developed.

(k) It is further the intent of the Legislature in enacting this chapter to encourage local communities to enter into partnerships that expand and strengthen supportive housing opportunities for very low income Californians with disabilities such as mental illness, HIV and AIDS, chemical dependency, and other chronic health conditions, or individuals eligible for services provided under the Lanterman Developmental Disabilities Services Act.

(*l*) It is the intent of the Legislature that state funds provide the incentive and leverage for local governments, the nonprofit sector, and the private sector to invest resources that expand and strengthen supportive housing opportunities.

(m) It is further the intent of the Legislature that local communities, in their applications for state funding, will identify, based upon a local assessment of need, both of the following:

(1) The specific characteristics of those among the target population that will live in the supportive housing.

(2) The types of supportive housing arrangements that are most appropriate.

(n) It is further the intent of the Legislature that funding provided for the Statewide Supportive Housing Initiative shall be used for the array of groups identified in the target population, as defined in subdivision (d) of Section 53260.

53255. This chapter shall be known and may be cited as the California Statewide Supportive Housing Initiative Act.

53260. For the purposes of this chapter, the following definitions apply:

(a) "Council" means the Supportive Housing Program Council.

(b) "Lead agency" means the State Department of Mental Health, which shall be the governmental agency that is primarily responsible for administering this chapter.

(c) "Supportive housing" means housing with no limit on length of stay, that is occupied by the target population, and that is linked to onsite or offsite services that assist the tenant to retain the housing, improve his or her health status, maximize their ability to live and, when possible, to work in the community. This housing may include apartments, single-room occupancy residences, or single-family homes.

(d) "Target population" means adults with low incomes having one or more disabilities, including mental illness, HIV or AIDS, substance abuse, or other chronic health conditions, or individuals eligible for services provided under the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code) and may, among other populations, include families with children, elderly persons, young adults aging out of the foster care system, individuals exiting from institutional settings, or homeless people.

53265. (a) In order to encourage the integration of housing and services, it is the intent of the Legislature to promote interagency coordination and collaboration among not only local private and public agencies, but also among the state agencies responsible for the provision of housing and support services to very low income Californians.

(b) Therefore there is hereby established the Supportive Housing Program Council to assist with the implementation of this chapter.

(c) Members of the council shall include all of the following:

(1) The following state officials or their designees.

(A) The Secretary of the Health and Welfare Agency.

(B) The Secretary of the Business, Transportation and Housing Agency.

(C) The directors of the State Department of Mental Health, the State Department of Developmental Services, the State Department of Social Services, the State Department of Health Services, the California Department of Aging, the Department of Housing and Community Development, the State Department of Alcohol and Drug Programs, the California Housing Finance Agency, the Department of Rehabilitation, and the Department of Employment Development.

(2) Three consumer representatives from the target population, appointed by the Secretary of the Health and Welfare Agency, shall also serve on the council.

(d) The duties of the council shall include all of the following:

(1) Developing, promoting, and implementing policy supporting this chapter.

(2) Assisting the lead agency in reviewing the requests for grant applications, reviewing grant applications submitted to the lead agency, and providing the lead agency with recommendations for awarding grants pursuant to Section 53275.

(3) Reviewing input regarding program policy and direction from individuals and entities with experience with the target population.

(4) Assisting the lead agency to coordinate programs under this chapter with special needs housing programs offered by government or private lenders.

(5) Assisting the lead agency in fulfilling its responsibilities under this chapter.

(6) Providing recommendations to the lead agency regarding this chapter.

(7) At the request of the lead agency, assisting agencies in planning and implementing this chapter including assisting with local technical assistance.

53270. The department shall award grants to local government or private nonprofit agencies for services to the target population in accordance with this chapter.

53275. (a) Grants shall be awarded by the lead agency based upon the recommendations of the council and pursuant to this chapter. The lead agency shall issue requests for applications for awarding the grants, which shall specify maximum dollar amounts for which grants may be awarded. The request for applications also shall specify other criteria, as required by this chapter. Applicants may apply for a single supportive housing project, or may submit a single application for several projects.

(b) The lead agency shall award grants as follows:

(1) Grants shall be awarded for up to a three-year period. Each award shall be in an amount not to exceed four hundred fifty thousand dollars ($450,000) for a single project, or one million dollars ($1,000,000) for an application from a single jurisdiction for several projects at the discretion of the lead agency, in consultation with the council. At the discretion of the lead agency, these grants may include up to twenty-five thousand dollars ($25,000) for one-time startup grants which may be used, among other things, for purchasing equipment or furniture, hiring staff, designing a program evaluation, or hiring a consultant.

(2) All grants awarded under this subdivision shall be matched by the grantee with fifty cents ($0.50) for each one dollar ($1) awarded in the first year, one dollar ($1) for each one dollar ($1) awarded in the second year, and one dollar and fifty cents ($1.50) for each one dollar ($1) awarded in the third year. The match shall be contributed in cash or as services or resources of comparable value. It is the intent of the Legislature that participants seek and utilize private funds, or

public funds administered by the federal or local governments for this purpose.

(3) In order to receive a grant under this chapter, an applicant shall demonstrate a need for supportive housing for low-income individuals with special needs and a local commitment to providing funding for the purpose of developing and operating supportive housing.

(c) A local nonprofit agency or local government agency shall be eligible for a grant under this chapter if it demonstrates in its program plan that it:

(1) Meets local priorities for supportive housing as identified in a publicly adopted planning document, such as the Consolidated Plan prepared for the Department of Housing and Urban Development, the Continuum of Care Plan, or a local plan for housing services for the target population.

(2) Provides evidence that affordable housing linked to services appropriate to the target population will be made available.

(3) Has established collaborative agreements with housing and service programs to deliver the necessary services and housing to the target population.

(4) Requests funding supplements and does not supplant existing funding.

53280. The lead agency shall give preference to proposals that do any of the following:

(a) Provide supportive housing to underserved target groups for which few alternative resources are available.

(b) Demonstrate collaborative agreements between entities that fund and provide local public and private housing services.

(c) Demonstrate cost avoidance as compared to other housing and service or institutional options available to the specific target population.

(d) Propose to serve the target population with an average income of not more than 100 percent of the federal poverty guidelines, or higher at the discretion of the council.

(e) Demonstrate the capacity and readiness to begin operation of a supportive housing program within one year of receiving the grant.

53285. (a) Each local nonprofit agency, local government agency, or group of agencies seeking a grant under this chapter shall submit an application to the lead agency at a time and manner, and with appropriate information, as the lead agency may reasonably require.

(b) Each application shall include all of the following:

(1) A description of the proposed supportive housing, including the target population or populations to be served, the type of housing and its location, and the services to be provided. If the application includes funding for housing services, a detailed description of how the funds will be used for operating or leasing subsidies.

(2) Documentation of the need for the supportive housing.

(3) A description of the objectives of the supportive housing, the amount and sources of required funding, the existing resources to be used or redirected, the priorities for development and timing of the supportive housing program, and the procedure for evaluation, including specific targets and outcome measures, provisions for data collection and recordkeeping, and the proposed results or outcomes of the supportive housing.

(4) Information on the track record and financial status of the agencies providing the services and the housing.

(5) A description of technical assistance needs, if any.

(6) A plan for continuing to carry out the supportive housing program at the end of the three-year funding period.

53290. For purposes of this chapter, support services include, but are not limited to:

(a) Health care services including immunizations, vision and hearing tests and services, dental services, physical examinations, diagnostic and referral services, prenatal care, and nutrition services.

(b) Mental health services including, but not limited to, crisis intervention, assessments, and referrals.

(c) Substance abuse prevention and treatment services.

(d) Family support and parenting education.

(e) Vocational, educational, and employment services, including tutoring, mentoring, internships, training, and job placement.

(f) Counseling.

(g) Case management services.

(h) Payments for housing costs, including payments for leasing costs or the operating costs of supportive housing as proposed by the applicant.

(i) The costs of evaluation.

(j) Other services that benefit the target population.

53295. A grantee may contract with other entities to provide the services described in Section 53290 to support housing residents.

53300. No more than 10 percent of the amount appropriated in a fiscal year for the purposes of this chapter may be used for state administration of this chapter, including evaluation and technical assistance. Technical assistance shall include, but is not limited to, assisting with collaborations, providing information, and convening training workshops. The Legislature shall be notified of the administrative costs of this program pursuant to Section 28 of the Budget Act.

53305. (a) The lead agency shall ensure that adequate resources are available to conduct an evaluation. The lead agency shall ensure that an evaluation of this chapter is conducted and completed as follows:

(1) An interim evaluation shall be completed and submitted to the Legislature at the end of the first 18 months in which grants are first awarded.

(2) A final evaluation shall be completed and submitted to the Legislature within nine months of the end of the three-year grant period.

(b) The evaluation shall be based upon the outcomes and methodologies for measuring success in achieving each proposed outcome identified by grantees, and shall, at a minimum, include outcomes related to cost avoidance, housing stability, quality of services, and the health status of tenants.

(c) The lead agency or its designee shall provide technical assistance to local jurisdictions in designing and completing the evaluation, including identification of a methodology for collecting the necessary information, and assistance with obtaining that information from state agencies to the extent necessary.

(d) The lead agency or its designee shall compile the information on outcomes from all grantees into a single interim evaluation, and a single final evaluation.

SEC. 15. It is the intent of the Legislature that, in conjunction with a proposal to enhance funding for an emerging infectious disease program at the state level, that the Legislature seek to enhance and strengthen the capability of local health jurisdictions to form a state-local system to control communicable disease and to closely monitor the health status of the state's population.

SEC. 16. Section 100171 of the Health and Safety Code is amended to read:

100171. Notwithstanding any other provision of law, whenever the department is authorized or required by statute, regulation, due process (Fourteenth Amendment, United States Constitution; subdivision (a) of Section 7 of Article I, California Constitution), or a contract, to conduct an adjudicative hearing leading to a final decision of the director or the department, the following shall apply:

(a) The proceeding shall be conducted pursuant to the administrative adjudication provisions of Chapter 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, except as specified in this section.

(b) Notwithstanding Section 11502 of the Government Code, whenever the department conducts a hearing under Chapter 4.5 (commencing with Section 11400) or Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, the hearing shall be conducted before an administrative law judge selected by the department and assigned to a hearing office that complies with the procedural requirements of Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) Notwithstanding Section 11508 of the Government Code, whenever the department conducts a hearing under Chapter 4.5 (commencing with Section 11400) or Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government

Code, the time and place of the hearing shall be determined by the staff assigned to the hearing office of the department, unless the department by regulation specifies otherwise.

(d) (1) The following sections of the Government Code shall apply to any adjudicative hearing conducted by the department only if the department has not, by regulation, specified an alternative procedure for the particular type of hearing at issue: Section 11503 (relating to accusations), Section 11504 (relating to statements of issues), Section 11505 (relating to the contents of the statement to respondent), Section 11506 (relating to the notice of defense), Section 11507.6 (relating to discovery rights and procedures), Section 11508 (relating to the time and place of hearings), and Section 11516 (relating to amendment of accusations).

(2) Any alternative procedure specified by the department in accordance with this subdivision shall conform to the purpose of the Government Code provision it replaces insofar as it is possible to do so consistent with the specific procedural requirements applicable to the type of hearing at issue.

(3) Any alternative procedures adopted by the department under this subdivision shall not diminish the amount of notice given of the issues to be heard by the department or deprive appellants of the right to discovery suitable to the particular proceedings. Modifications of timeframes or of the place of hearing made by regulation may not lengthen timeframes within which the department is required to act nor require hearings to be held at a greater distance from the appellant's place of residence or business than is the case under the otherwise applicable Government Code provision.

(e) The specific timelines specified in Section 11517 of the Government Code shall not apply to any adjudicative hearing conducted by the department to the extent that the department has, by regulation, specified different timelines for the particular type of hearing at issue.

(f) In the case of any adjudicative hearing conducted by the department, "transcript," as used in subdivision (c) of Section 11517 of the Government Code, shall be deemed to include any alternative form of recordation of the oral proceedings, including, but not limited to, an audiotape.

(g) Pursuant to Section 11415.50 of the Government Code, the department may, by regulation, provide for any appropriate informal procedure to be used for an informal level of review that does not itself lead to a final decision of the department or the director. The procedures specified in Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any such an informal level of review.

(h) Notwithstanding any other provision of law, any adjudicative hearing conducted by the department that is conducted pursuant to

a federal statutory or regulatory requirement that contains specific procedures may be conducted pursuant to those procedures to the extent they are inconsistent with the procedures specified in this section.

(i) Nothing in this section shall apply to a fair hearing involving a Medi-Cal beneficiary insofar as the hearing is, by agreement or otherwise, heard before an administrative law judge employed by the State Department of Social Services, or insofar as the hearing is being held pursuant to Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code in connection with services provided by the State Department of Developmental Services under applicable federal medicaid waivers. Nothing in this subdivision shall be interpreted as abrogating the authority of the State Department of Health Services as the single state agency under the state medicaid plan.

(j) Nothing in this provision shall supersede express provisions of law that apply to any hearing that is not adjudicative in nature or that does not involve due process rights specific to an individual or specific individuals, as opposed to the general public or a segment of the general public.

SEC. 17. Section 101230 of the Health and Safety Code is amended to read:

101230. From the appropriation made for the purposes of this article, allocation shall be made to the administrative bodies of qualifying local health jurisdictions described as public health administrative organizations in Section 101185 in the following manner:

(a) A basic allotment as follows:

To the administrative bodies of local health jurisdictions a basic allotment of fifty thousand dollars ($50,000) per local health jurisdiction or twenty-one and seven-tenths cents ($0.2171048900) per capita, whichever is greater. The population estimates used for the calculation of the per capita allotment shall be based on the Department of Finance's E-1 Report, "City/County Population Estimates with Annual Percentage Changes" as of January 1 of the previous fiscal year. However, if within a county there are one or more city health jurisdictions, the county shall subtract the population of the city or cities from the county total population for purposes of calculating the per capita total. If the amounts appropriated are insufficient to fully fund the allocations specified in this subdivision, the State Department of Health Services shall prorate and adjust each local health jurisdiction's allocation using the same percentage that each local health jurisdiction's allocation represents to the total appropriation under the allocation methodology specified in this subdivision.

(b) A per capita allotment, determined as follows:

After deducting the amounts allowed for the basic allotment as provided in subdivision (a), the balance of the appropriation, if any,

shall be allotted on a per capita basis to the administrative body of each local health jurisdiction in the proportion that the population of that local health jurisdiction bears to the population of all qualified local health jurisdictions of the state.

(c) Beginning in the fiscal year 1998–99, funds appropriated for the purposes of this article shall be used to supplement existing levels of the services described in paragraphs (1) and (2) of subdivision (d) provided by qualifying participating local health jurisdictions. As part of a county's or city's annual realignment trust fund report to the Controller, a participating county or city shall annually certify to the Controller that it has deposited county or city funds equal to or exceeding the amount described in subdivisions (a) and (b) of Section 17608.10. The county or city shall not be required to submit any additional reports or modifications to existing reports to document compliance with this subdivision. Funds shall be disbursed quarterly in advance to local health jurisdictions beginning July 1, 1998. If a county or city does not accept its allocation, any unallocated funds provided under this section shall be redistributed according to subdivision (b) to the participating counties and cities that remain.

(d) Funds shall be used for the following:

(1) Communicable disease control activities. Communicable disease control activities shall include, but not be limited to, communicable disease prevention, epidemiologic services, public health laboratory identification, surveillance, immunizations, follow-up care for sexually transmitted disease and tuberculosis control, and support services.

(2) Community and public health surveillance activities. These activities shall include, but not be limited to, epidemiological analyses, and monitoring and investigating communicable diseases and illnesses due to other untoward health events.

(e) Funds shall not be used for medical services, including jail medical treatment, except as provided in subdivision (d).

SEC. 18. Section 101300 of the Health and Safety Code is amended to read:

101300. (a) (1) The board of supervisors of a county with a population of less than 50,000 may enter into a contract with the department and the department may enter into a contract with that county to organize and operate a local public health service in that county.

(2) The department may conduct the local public health service either directly, or by contract with other agencies, or by some combination of these methods as agreed upon by the department and the board of supervisors of the county concerned.

(3) The board of supervisors may create a county board of public health or similar local advisory group.

(b) Any county proposing to contract with the department pursuant to this section in the 1992–93 fiscal year and each fiscal year thereafter shall submit to the department a notice of intent to

contract adopted by the board of supervisors no later than March 1 of the fiscal year preceding the fiscal year for which the agreement will be in effect in accordance with procedures established by the department. A county may withdraw this notice no later than May 1 of the fiscal year preceding the fiscal year for which the agreement will be in effect in accordance with procedures established by the department. If a county fails to withdraw its notice by this date, it shall be responsible for any and all necessary costs incurred by the department in providing or preparing to provide public health services in that county.

(c) A county contracting with the department pursuant to this section shall not be relieved of its public health care obligation under Section 101025.

(d) (1) Any county contracting with the department pursuant to this section shall pay, by the 15th of each month, the agreed contract amount.

(2) If a county does not make the agreed monthly payment, the department may terminate the county's participation in the program.

(e) The counties and the department shall work collectively to ensure that expenditures do not exceed the funds available for the program in any fiscal year.

(f) The Legislature hereby determines that an expedited contract process for contracts under this section is necessary. Contracts under this section shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(g) The state shall not incur any liability except as specified in this section.

SEC. 19. Section 101305 of the Health and Safety Code is amended to read:

101305. Any counties that were eligible for organization and operation of local public health services by the department pursuant to former Section 1157, as amended by Section 130 of Chapter 429 of the Statutes of 1978, as of January 1, 1988, shall continue to be eligible, notwithstanding an increase in total population beyond the 50,000 population limit of that section.

SEC. 20. Section 103640 of the Health and Safety Code is amended to read:

103640. (a) In addition to the fees prescribed by subdivisions (a) to (d), inclusive, of Section 103625, all applicants for certified copies of the records described in those subdivisions shall pay an additional fee of up to two dollars ($2), that shall be collected by the State Registrar, the local registrar, county recorder, or county clerk, as the case may be.

(b) Except as provided in paragraph (2), the local public official charged with the collection of the additional fee established pursuant to subdivision (a) may create a Vital and Health Statistics Trust Fund.

The fees collected by local public officials pursuant to subdivision (a) shall be distributed as follows:

(1) Up to ninety cents ($0.90) of each fee collected pursuant to this section shall be deposited with the State Registrar for deposit pursuant to Section 102250.

(2) The remainder of the fee collected pursuant to this section shall be deposited into the collecting agency's Vital and Health Statistics Trust Fund.

(3) Any local public official that does not establish a local Vital and Health Statistics Trust Fund shall forward the entire fee collected pursuant to this section to the State Registrar, who shall deposit the fees pursuant to Section 102250.

(4) Fees collected by the State Registrar shall be deposited pursuant to Section 102250.

(c) Moneys in each Vital and Health Statistics Trust Fund shall be available to the public official charged with the collection of fees pursuant to this section to defray the administrative costs of collecting and reporting with respect to those fees and for the other costs, as follows:

(1) Modernization of vital record operations, including improvement, automation, and technical support of vital record systems.

(2) Improvement in the collection and analysis of health-related birth and death certificate information, and other community health data collection and analysis, as appropriate.

(d) Funds collected pursuant to this section shall not be used to supplant existing funding that is necessary for the daily operation of vital record systems. It is the intent of the Legislature that funds collected pursuant to this section be used to enhance service to the public, to improve analytical capabilities of state and local health authorities in addressing the health needs of newborn children, maternal health problems, and to analyze the health status of the general population.

(e) Each county shall annually submit a report to the State Registrar by March 1, containing information on the amount of revenues collected pursuant to this section for the previous calendar year and on how the revenues were expended and for what purpose.

(f) This section 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.

(g) This section shall become operative on January 1, 1997.

SEC. 21. Section 104569 is added to the Health and Safety Code, to read:

104569. Funds appropriated for purposes of this program for a fiscal year shall be available for expenditure without regard to fiscal year.

SEC. 22. Section 123975 of the Health and Safety Code is amended to read:

123975. (a) The department, in consultation with selected representatives of participating neonatal intensive care units, shall establish a system to screen all newborns and infants for hearing loss as defined in subdivision (e) of Section 124116 and create and maintain a system of assessment and followup services for newborns and infants identified by the screening in approved neonatal intensive care units participating in the California Children's Services Program. Screening, assessment and followup services and reporting of these services shall be provided in a manner consistent with Article 6.5 (commencing with Section 124115) of Chapter 3.

This section shall not be applicable to a newborn child whose parent or guardian objects to the tests on the ground that the tests conflict with his or her religious beliefs or practices.

(b) It is the intent of the Legislature, in enacting this section, to ensure the establishment and maintenance of protocols and quality of standards.

(c) The department shall implement this section for newborns and infants in neonatal intensive care units participating in the California Children's Services Program.

SEC. 23. Article 6.5 (commencing with Section 124115) is added to Chapter 3 of Part 2 of Division 106 of the Health and Safety Code, to read:

Article 6.5. Newborn and Infant Hearing Screening, Tracking, and Intervention Program

124115. This article shall be known, and may be cited as, the Newborn and Infant Hearing Screening, Tracking and Intervention Act.

124115.5. (a) The Legislature finds and declares all of the following:

(1) Hearing loss occurs in newborns more frequently than any other health condition for which newborn screening is currently required.

(2) Early detection of hearing loss, early intervention, and followup services before six months of age, have been demonstrated to be highly effective in facilitating the development of a child's health and communication and cognitive skills.

(3) The State of California supports the National Healthy People 2000 goals, which promote early identification of children with hearing loss.

(4) Children of all ages can receive reliable and valid screening for hearing loss in a cost-effective manner.

(5) Appropriate screening and identification of newborns and infants with hearing loss will facilitate early intervention during this critical time for development of communication, and may, therefore, serve the public purposes of promoting the healthy development of

children and reducing public expenditure for health care and special education and related services.

(b) The purposes of this article shall be to do all of the following:

(1) Provide early detection of hearing loss in newborns, as soon after birth as possible, to enable children who fail a hearing screening and their families and other caregivers to obtain needed confirmatory tests or multidisciplinary evaluation, or both, and intervention services, at the earliest opportunity.

(2) Prevent or mitigate delays of language and communication development that could lead to academic failures associated with late identification of hearing loss.

(3) Provide the state with the information necessary to effectively plan, establish, and evaluate a comprehensive system of appropriate services for parents with newborns and infants who have a hearing loss.

124116. As used in this article:

(a) "Birth admission" means the time after birth that the newborn remains in the hospital nursery prior to discharge.

(b) "CCS" means the California Children's Services program administered through the State Department of Health Services.

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

(d) "Followup services" means all of the following:

(1) All services necessary to diagnose and confirm a hearing loss.

(2) Ongoing audiological services to monitor hearing.

(3) Communication services, including, but not limited to, aural rehabilitation, speech, language, social, and psychological services.

(4) Necessary support of the infant and family.

(e) "Hearing loss" means a hearing loss of 30 decibels or greater in the frequency region important for speech recognition and comprehension in one or both ears (from 500 through 4000 Hz). However, as technology allows for changes to this definition through the detection of less severe hearing loss, the department may modify this definition by regulation.

(f) "Infant" means a child 29 days through 12 months old.

(g) "Intervention services" means the early intervention services described in Part C of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1475 et seq.).

(h) "Newborn" means a child less than 29 days old.

(i) "Newborn hearing screening services" means those hearing screening tests that are necessary to achieve the identification of all newborns and infants with a hearing loss.

(j) "Parent" means a natural parent, adoptive parent, or legal guardian of a child.

124116.5. (a) (1) Every CCS-approved general acute care hospital with licensed perinatal services in this state shall offer all parents of a newborn, upon birth admission, a hearing screening test for the identification of hearing loss, using protocols approved by the

department or its designee. The department shall begin phasing in implementation of a comprehensive hearing screening program by CCS-approved general acute care hospitals with licensed perinatal services on or after July 1, 1999, and a 100 percent participation shall be achieved by December 31, 2002.

(2) In order to meet the department's certification criteria, a hospital shall be responsible for developing a screening program that provides competent hearing screening, utilizes appropriate staff and equipment for administering the testing, completes the testing prior to the newborn's discharge from a newborn nursery unit, refers infants with abnormal screening results, maintains and reports data as required by the department, and provides physician and family-parent education.

(b) A hearing screening test provided for pursuant to subdivision (a) shall be performed by a licensed physician, licensed registered nurse, licensed audiologist, or an appropriately trained individual who is supervised in the performance of the test by a licensed health care professional.

124117. The department or its designee shall approve hospitals for participation as newborn hearing screening providers. These facilities shall then receive payment from the department for the newborn hearing screening services provided to newborns and infants eligible for the Medi-Cal or CCS programs in accordance with this article.

124118. The department or its designee shall provide every CCS-approved acute care hospital that has licensed perinatal services or a CCS-approved neonatal intensive care unit (NICU), or both, as specified in Section 123975, written information on the current and most effective means available to screen the hearing of newborns and infants, and shall provide technical assistance and consultation to these hospitals in developing a system of screening each newborn and infant receiving care at the facility. The information shall also include the mechanism for referral of newborns and infants with abnormal test results.

124118.5. (a) The department shall establish a system of early hearing detection and intervention centers that shall provide technical assistance and consultation to hospitals in the startup and ongoing implementation of a facility screening program and followup system.

(b) The early hearing detection and intervention centers shall be chosen by the department according to standards and criteria developed by the California Children's Services Program (CCS). Each center shall be responsible for a separate geographic catchment area as determined by the program.

(c) Each center shall be required to develop a system that shall provide outreach and education to hospitals in its catchment area, approve hospitals on behalf of the department for participation as newborn hearing screening providers, maintain a data base of all

newborns and infants screened in the catchment area, ensure appropriate follow up for newborns and infants with an abnormal screen including diagnostic evaluation and referral to intervention service programs if the newborn or infant is found to have a hearing loss, and provide coordination with the CCS and local early intervention programs as defined in Title 14 (commencing with Section 95000) of the Government Code.

124119. (a) The department shall develop and implement a reporting and tracking system for newborns and infants tested for hearing loss.

(b) The system shall provide the department with information and data to effectively plan, establish, monitor, and evaluate the Newborn and Infant Hearing Screening, Tracking and Intervention Program, including the screening and followup components, as well as the comprehensive system of services for newborns and infants who are deaf or hard-of-hearing and their families.

(c) Every CCS-approved acute care hospital with licensed perinatal services or CCS-approved NICU, or both, in this state shall report to the department or the department's designee information as specified by the department to be included in the department's reporting and tracking system.

(d) All providers of audiological follow up and diagnostic services provided under this article shall report to the department or the department's designee information as specified by the department to be included in the department's reporting and tracking system.

(e) The information compiled and maintained in the tracking system shall be kept confidential in accordance with Chapter 5 (commencing with Section 10850) of Part 1 of Division 9 of the Welfare and Institutions Code, the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code), and the applicable requirements and provisions of Part C of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1475 et seq.).

(f) Data collected by the tracking system obtained directly from the medical records of the newborn or infant shall be for the confidential use of the department and for the persons or public or private entities that the department determines are necessary to carry out the intent of the reporting and tracking system.

(g) A health facility, clinical laboratory, audiologist, physician, registered nurse, or any other officer or employee of a health facility or laboratory or employee of an audiologist or physician, shall not be criminally or civilly liable for furnishing information to the department or its designee pursuant to the requirements of this section.

124119.5. Parents of all newborns and infants diagnosed with a hearing loss shall be provided written information on the availability of community resources and services for children with hearing loss, including those provided in accordance with the federal Individuals

with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), through the reporting and tracking system followup procedures. Information shall include listings of local and statewide nonprofit deaf and hard-of-hearing consumer-based organizations, parent support organizations affiliated with deafness, and programs offered through the State Department of Social Services, Office of Deaf Access, State Department of Developmental Services, and the State Department of Education.

124120. The department shall conduct a community outreach and awareness campaign to inform medical providers, pregnant women, and the families of newborns and infants on the availability of the newborn hearing screening program and the value of early hearing testing. The outreach and awareness campaign shall be conducted by an independent contractor.

124120.5. A newborn hearing screening test shall not be performed without the written consent of the parent.

SEC. 24. Section 124560 is added to the Health and Safety Code, to read:

124560. (a) The Seasonal Agricultural and Migratory Workers Advisory Committee is hereby established in the State Department of Health Services.

(b) The committee shall advise the department on the level of resources, priorities, criteria, and guidelines necessary to implement this chapter pertaining to the health of seasonal and migratory agricultural workers.

(c) The committee shall be composed of 11 members, appointed by the Director of Health Services, who are knowledgeable concerning the health care needs of seasonal and migratory farm workers and their families. Committee members shall serve two-year terms. Two members shall be nominated by the Speaker of the Assembly, and two by the Senate Committee on Rules. The members of the committee shall be selected from the following categories of persons:

(1) Seasonal and migratory farm workers and their families.

(2) Health care providers from nonprofit community health centers that have a documented history of serving seasonal and migratory agricultural workers.

(3) Health care professionals.

(4) Private citizens with documented experience in serving the seasonal agricultural and migratory worker population.

SEC. 25. Section 125000 of the Health and Safety Code is amended to read:

125000. (a) It is the policy of the State of California to make every effort to detect, as early as possible, phenylketonuria and other preventable heritable or congenital disorders leading to mental retardation or physical defects.

The department shall establish a genetic disease unit, that shall coordinate all programs of the department in the area of genetic

disease. The unit shall promote a statewide program of information, testing, and counseling services and shall have the responsibility of designating tests and regulations to be used in executing this program.

The information, tests, and counseling for children shall be in accordance with accepted medical practices and shall be administered to each child born in California once the department has established appropriate regulations and testing methods. The information, tests, and counseling for pregnant women shall be in accordance with accepted medical practices and shall be offered to each pregnant woman in California once the department has established appropriate regulations and testing methods. These regulations shall follow the standards and principles specified in Section 124980. The department may provide laboratory testing facilities or contract with any laboratory that it deems qualified to conduct tests required under this section. However, notwithstanding Section 125005, provision of laboratory testing facilities by the department shall be contingent upon the provision of funding therefor by specific appropriation to the Genetic Disease Testing Fund enacted by the Legislature. If moneys appropriated for purposes of this section are not authorized for expenditure to provide laboratory facilities, the department may nevertheless contract to provide laboratory testing services pursuant to this section and shall perform laboratory services, including, but not limited to, quality control, confirmatory, and emergency testing, necessary to ensure the objectives of this program.

(b) The department shall charge a fee for any tests performed pursuant to this section. The amount of the fee shall be established and periodically adjusted by the director in order to meet the costs of this section.

(c) The department shall inform all hospitals or physicians and surgeons, or both, of required regulations and tests and may alter or withdraw any of these requirements whenever sound medical practice so indicates.

(d) This section shall not apply if a parent or guardian of the newborn child objects to a test on the ground that the test conflicts with his or her religious beliefs or practices.

(e) The genetic disease unit is authorized to make grants or contracts or payments to vendors approved by the department for all of the following:

(1) Testing and counseling services.

(2) Demonstration projects to determine the desirability and feasibility of additional tests or new genetic services.

(3) To initiate the development of genetic services in areas of need.

(4) To purchase or provide genetic services from any sums as are appropriated for this purpose.

(f) The genetic disease unit shall evaluate and prepare recommendations on the implementation of tests for the detection of hereditary and congenital diseases, including, but not limited to, cystic fibrosis and congenital adrenal hyperplasia. The genetic disease unit shall also evaluate and prepare recommendations on the availability and effectiveness of preventative followup interventions, including the use of specialized medically necessary dietary products.

It is the intent of the Legislature that funds for the support of the evaluations and recommendations required pursuant to this subdivision, and for the activities authorized pursuant to subdivision (e), shall be provided in the annual Budget Act appropriation from the Genetic Disease Testing Fund.

(g) Health care providers that contract with a prepaid group practice health care service plan that annually has at least 20,000 births among its membership, may provide, without contracting with the department, any or all of the testing and counseling services required to be provided under this section or the regulations adopted pursuant thereto, if the services meet the quality standards and adhere to the regulations established by the department and the plan pays that portion of a fee established under this section that is directly attributable to the department's cost of administering the testing or counseling service and to any required testing or counseling services provided by the state for plan members. The payment by the plan, as provided in this subdivision, shall be deemed to fulfill any obligation the provider or the provider's patient may have to the department to pay a fee in connection with the testing or counseling service.

(h) The department may appoint experts in the area of genetic screening, including, but not limited to, cytogenetics, molecular biology, prenatal, specimen collection, and ultrasound to provide expert advice and opinion on the interpretation and enforcement of regulations adopted pursuant to this section. These experts shall be designated agents of the state with respect to their assignments. These experts shall receive no salary, but shall be reimbursed for expenses associated with the purposes of this section. All expenses of the experts for the purposes of this section shall be paid from the Genetic Disease Testing Fund.

SEC. 26. Section 125070 of the Health and Safety Code is amended to read:

125070. Laboratories licensed by the department shall not offer the maternal serum-alpha fetoprotein screening test for prenatal detection of neural tube defects of the fetus until the department has developed regulations, under the authorization granted by Section 124980. However, laboratories providing this testing, as of July 21, 1983, may continue to provide this testing until these regulations become operative. The department shall adopt regulations pursuant to this section.

SEC. 27. Section 12693.95 of the Insurance Code is amended to read:

12693.95. (a) The board in consultation with the Department of Alcohol and Drug Programs shall provide the Legislature by April 15, 1998, a proposal assessing the viability of providing additional drug and alcohol treatment services for children enrolled in the program.

If the board determines that it is feasible to provide additional federal funds received pursuant to Title XXI (commencing with Section 2101) of the Social Security Act to counties to finance drug and alcohol services and required federal approval is obtained, the board shall negotiate with participating health plans to establish memoranda of understanding between plans and counties to facilitate referral of children in need of these services.

(b) Based on the April 15, 1998, report by the board to the Legislature, the Legislature finds and declares that there is a statewide gap in publicly funded alcohol and other drug treatment for adolescents which is significant and systemic.

(1) Therefore, the Department of Alcohol and Drug Programs, in cooperation with the board, shall do the following:

(A) Review capacity needs for the Healthy Families Program target group after year one data has been collected and an assessment of the adequacy of the benefit can be made.

(B) Request that counties provide data on the number of adolescents requesting alcohol and other drug treatment and whether they are participating in the Healthy Families Program.

(2) The board shall do the following:

(A) Request the participating health plans to voluntarily collect data, as prescribed by the board, on the number of children needing services that exceed the substance abuse benefit in their plan.

(B) Upon contract renewal, require participating health plans to collect and report the data.

(C) By September 1, 1999, provide the policy and fiscal committees of the Legislature with an analysis of the data obtained by the Department of Alcohol and Drug Programs and from the participating health plans.

SEC. 28. Chapter 16.1 (commencing with Section 12693.98) is added to Part 6.2 of Division 2 of the Insurance Code, to read:

CHAPTER 16.1. HEALTHY FAMILIES BRIDGE BENEFITS PROGRAM

12693.98. (a) (1) The Healthy Families Bridge Benefits Program is hereby established to provide any child who meets the criteria set forth in subdivision (b) with a one calendar-month period of health care benefits in order to provide the child with an opportunity to apply for the Healthy Families Program established under Chapter 16 (commencing with Section 12693).

(2) The Healthy Families Bridge Benefits Program shall be administered by the board.

(b) (1) Any child who meets all of the following requirements shall be eligible for one calendar month of Healthy Families benefits funded by Title XXI of the Social Security Act, known as the State Children's Health Insurance Program:

(A) He or she has been receiving, but is no longer eligible for, full-scope Medi-Cal benefits without a share of cost.

(B) He or she is eligible for full-scope Medi-Cal benefits with a share of cost.

(C) He or she is under 19 years of age at the time he or she is no longer eligible for full-scope Medi-Cal benefits without a share of cost.

(D) He or she has family income at or below 200 percent of the federal poverty level.

(E) He or she is not otherwise excluded under the definition of targeted low-income child under subsections (b)(1)(B)(ii), (b)(1)(C), and (b)(2) of Section 2110 of the Social Security Act (42 U.S.C. Secs. 1397jj(b)(1)(B)(ii), 1397jj(b)(1)(C), and 1397jj(b)(2)).

(2) The one calendar month of benefits under this chapter shall begin on the first day of the month following the last day of the receipt of benefits without a share of cost.

(c) The income methodology for determining a child's family income, as required by paragraph (1) of subdivision (b) shall be the same methodology used in determining a child's eligibility for the full scope of Medi-Cal benefits.

(d) The one calendar month period of Healthy Families benefits provided under this chapter shall be identical to the scope of benefits that the child was receiving under the Medi-Cal program without a share of cost.

(e) The one calendar month period of Healthy Families benefits provided under this chapter shall only be made available through a Medi-Cal provider or under a Medi-Cal managed care arrangement or contract.

(f) Nothing in this section shall be construed to provide Healthy Families benefits for more than a one calendar-month period under any circumstances, including the failure to apply for benefits under the Healthy Families Program or the failure to be made aware of the availability of the Healthy Families Program, unless the circumstances described in subdivision (b) reoccur.

(g) (1) This section shall become operative on the first day of the second month following the effective date of this section, subject to paragraph (2).

(2) Under no circumstances shall this section become operative until, and shall be implemented only to the extent that, all necessary federal approvals, including approval of any amendments to the State Child Health Plan have been sought and obtained and federal financial participation under the federal State Children's Health Insurance Program, as set forth in Title XXI of the Social Security Act, has been approved.

(h) This section shall become inoperative if an unappealable court decision or judgment determines that any of the following apply:

(1) The provisions of this section are unconstitutional under the United States Constitution or the California Constitution.

(2) The provisions of this section do not comply with the State Children's Health Insurance Program, as set forth in Title XXI of the Social Security Act.

(3) The provisions of this section require that the health care benefits provided pursuant to this section are required to be furnished for more than one calendar month.

(i) For purposes of this chapter, "Medi-Cal" means the state health care program established pursuant to Chapter 14 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code.

SEC. 29. Section 4433.5 is added to the Welfare and Institutions Code, to read:

4433.5. Notwithstanding Section 4433, the department may contract with the Organization of Area Boards for the purpose of providing clients' rights advocacy services to individuals with developmental disabilities who reside in developmental centers and state hospitals.

SEC. 30. Section 4434 of the Welfare and Institutions Code is amended to read:

4434. (a) Notwithstanding preexisting rights to enforce the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500)), it is the intent of the Legislature that the department ensure that the regional centers operate in compliance with federal and state law and regulation and provide services and supports to consumers in compliance with the principles and specifics of this division.

(b) The department shall take all necessary actions to support regional centers to successfully achieve compliance with this section and provide high quality services and supports to consumers and their families.

(c) The contract between the department and individual regional centers required by Chapter 5 (commencing with Section 4620) of Division 4.5 shall include a provision requiring each regional center to render services in accordance with applicable provisions of state laws and regulations. In the event that the department finds a regional center has violated this requirement, or whenever it appears that any regional center has engaged in or is about to engage in any act or practice constituting a violation of any provision of Division 4.5 (commencing with Section 4500) or any regulation adopted thereunder, the department shall promptly take the appropriate steps necessary to ensure compliance with the law, including actions authorized under Section 4632 or 4635. The department, as the director deems appropriate, may pursue other legal or equitable remedies for enforcement of the obligations of regional centers

including, but not limited to, seeking specific performance of the contract between the department and the regional center or otherwise act to enforce compliance with Division 4.5 (commencing with Section 4500) or any regulation adopted thereunder.

(d) As part of its responsibility to monitor regional centers, the department shall collect and review printed materials issued by the regional centers, including, but not limited to, purchase of service policies and other policies and guidelines utilized by regional centers when determining the services needs of a consumer, instructions and training materials for regional center staff, board meeting agendas and minutes, and general policy and notifications provided to all providers and consumers and families. Within a reasonable period of time, the department shall review new or amended purchase-of-service policies prior to implementation by the regional center to ensure compliance with statute and regulation. The department shall take appropriate and necessary steps to prevent regional centers from utilizing a policy or guideline that violates any provision of Division 4.5 (commencing with Section 4500) or any regulation adopted thereunder.

SEC. 31. Section 4511 is added to the Welfare and Institutions Code, to read:

4511. (a) The Legislature finds and declares that meeting the needs and honoring the choices of persons with developmental disabilities and their families requires information, skills and coordination and collaboration between consumers, families, regional centers, advocates and service and support providers.

(b) The Legislature further finds and declares that innovative and ongoing training opportunities can enhance the information and skills necessary and foster improved coordination and cooperation between system participants.

(c) The department shall be responsible, subject to the availability of fiscal and personnel resources, for securing, providing, and coordinating training to assist consumers and their families, regional centers, and services and support providers in acquiring the skills, knowledge, and competencies to achieve the purposes of this division.

(d) This training may include health and safety issues; person-centered planning; consumer and family rights; building circles of support; training and review protocols for the use of psychotropic and other medications; crime prevention; life quality assessment and outcomes; maximizing inclusive opportunities in the community; how to communicate effectively with consumers; and developing opportunities for decisionmaking.

(e) Whenever possible, the department shall utilize existing training tools and expertise.

(f) Each training module shall include an evaluation component.

(g) The department shall establish an advisory group, consisting of consumers, family members, regional centers, service providers,

advocates and legislative representatives. The advisory group shall make recommendations for training subjects, review the design of training modules, and assess training outcomes.

SEC. 32. Section 4513 is added to the Welfare and Institutions Code, to read:

4513. (a) Whenever the department allocates funds to a regional center through a request for proposal process to implement special projects funded through the Budget Act, the department shall require that the regional center demonstrate community support for the proposal.

(b) In awarding funds to regional centers to implement such proposals, the department shall consider, among other indicators, the following:

(1) The demonstrated commitment of the regional center in establishing or expanding the service or support.

(2) The demonstrated ability of the regional center to implement the proposal.

(3) The success or failure of previous efforts to establish or expand the service or support.

(4) The need for the establishment or expansion of the service and support in the regional center catchment area as compared to other geographic areas.

(c) The department may require periodic progress reports from the regional center in implementing a proposal.

(d) The department shall ensure that each funded and implemented proposal be evaluated and that the evaluation process include the input of consumers, families, providers and advocates, as appropriate.

(e) The department shall make these evaluations available to the public, upon request.

(f) The department shall develop and implement strategies for fostering the duplication of successful projects.

SEC. 33. Section 4596.5 of the Welfare and Institutions Code is amended to read:

4596.5. (a) In order to remain informed about the quality of services in the area and protect the legal, civil, and service rights of persons with developmental disabilities pursuant to Section 4590, the Legislature finds that it is necessary to conduct life quality assessments with consumers served by the regional centers.

(b) It is the intent of the Legislature that life quality assessments described in this section be conducted by area boards, unless an independent evaluation of the life quality assessment process, that shall be completed by April 30, 1998, identifies compelling reasons why this function should not be conducted by area boards.

(c) By July 1, 1998, the department shall enter into an interagency agreement with the Organization of Area Boards, on behalf of the area boards, to conduct the life quality assessments described in this section.

(d) Consistent with the responsibilities described in this chapter, the area board, with the consent of the consumer and, when appropriate, a family member, shall conduct life quality assessments with consumers living in out-of-home placements, supported living arrangements, or independent living arrangements no less than once every three years or more frequently upon the request of a consumer, or, when appropriate, a family member. A regional center or the department shall annually provide the local area board with a list, including, but not limited to, the name, address, and telephone number of each consumer, and, when appropriate, a family member, the consumer's date of birth, and the consumer's case manager, for all consumers living in out-of-home placements, supported living arrangements, or independent living arrangements, in order to facilitate area board contact with consumers and, when appropriate, family members, for the purpose of conducting life quality assessments.

(e) The life quality assessments shall be conducted by utilizing the State Department of Developmental Services' Looking at Life Quality Handbook.

(f) The assessments shall be conducted by consumers, families, providers, and others, including volunteer surveyors. Each area board shall recruit, train, supervise, and coordinate surveyors. Upon request, and if feasible, the area board shall respect the request of a consumer and, when appropriate, family member, for a specific surveyor to conduct the life quality assessment. An area board may provide stipends to surveyors.

(g) A life quality assessment shall be conducted within 90 days prior to a consumer's triennial individual program plan meeting, so that the consumer and regional center may use this information as part of the planning process.

(h) Prior to conducting a life quality assessment, the area board shall meet with the regional center to coordinate the exchange of appropriate information necessary to conduct the assessment and ensure timely followup to identified violations of any legal, civil, or service rights.

(i) Following the conduct of each life quality assessment, the area board shall develop a report of its findings and provide a copy of the report to the consumer, when appropriate, family members, and the regional center providing case management services to the consumer. In the event that a report identifies alleged violations of any legal, civil, or service right, the area board shall notify the regional center and the department of the alleged violation. The department shall monitor the regional center to ensure that violations are addressed and resolved in a timely manner.

(j) Regional centers shall review information from the life quality assessments on a systemic basis in order to identify training and resource development needs.

(k) Effective August 1, 1999, and annually thereafter, the Organization of Area Boards shall prepare and submit a report to the Governor, the Legislature, and the department describing the activities and accomplishments related to the implementation of this section. The report shall include, but not be limited to, the number of life quality assessments conducted, the number of surveyors, including those provided stipends, a description of the surveyor recruitment process and training program, including any barriers to recruitment, the number, nature, and outcome of any identified violations of legal, civil, or service rights reported to regional centers, and recommendations for improvement in the life quality assessment process.

(*l*) Implementation of this section shall be subject to an annual appropriation of funds in the state Budget Act for this purpose.

(m) If the department finds, based on the results of the independent study described in subdivision (b), that there is a compelling reason why the area boards should not conduct the life quality assessments, it may select an alternative governmental agency or contract with a nonprofit agency to conduct the life quality assessments as described in this section. The department shall notify the Governor and the Legislature of such a finding, including the reasons for the finding and a description of the alternative method by which the department will ensure the life quality assessment process is completed.

SEC. 34. Section 4629 of the Welfare and Institutions Code is amended to read:

4629. (a) The state shall enter into five-year contracts with regional centers, subject to the annual appropriation of funds by the Legislature.

(b) The contracts shall include a provision requiring each regional center to render services in accordance with applicable provision of state laws and regulations.

(c) (1) The contracts shall include annual performance objectives that shall do both of the following:

(A) Be specific, measurable, and designed to do all of the following:

(i) Assist consumers to achieve life quality outcomes.

(ii) Achieve meaningful progress above the current baselines.

(iii) Develop services and supports identified as necessary to meet identified needs.

(B) Be developed through a public process as described in the department's guidelines that includes, but is not limited to, all of the following:

(i) Providing information, in an understandable form, to the community about regional center services and supports, including budget information and baseline data on services and supports and regional center operations.

(ii) Conducting a public meeting where participants can provide input on performance objectives and using focus groups or surveys to collect information from the community.

(iii) Circulating a draft of the performance objectives to the community for input prior to presentation at a regional center board meeting where additional public input will be taken and considered before adoption of the objectives.

(2) In addition to the performance objectives developed pursuant to this section, the department may specify in the performance contract additional areas of service and support that require development or enhancement by the regional center. In determining those areas, the department shall consider public comments from individuals and organizations within the regional center catchment area, the distribution of services and supports within the regional center catchment area, and review how the availability of services and supports in the regional area catchment area compares with other regional center catchment areas.

(d) Each contract with a regional center shall specify steps to be taken to ensure contract compliance, including, but not limited to, all of the following:

(1) Incentives that encourage regional centers to meet or exceed performance standards.

(2) Levels of probationary status for regional centers that do not meet, or are at risk of not meeting, performance standards. The department shall require that corrective action be taken by any regional center which is placed on probation. Corrective action may include, but is not limited to, mandated consultation with designated representatives of the Association of Regional Center Agencies or a management team designated by the department, or both. The department shall establish the specific timeline for the implementation of corrective action and monitor its implementation. When a regional center is placed on probation, the department shall provide the appropriate area board with a copy of the correction plan, timeline, and any other action taken by the department relating to the probationary status of the regional center.

(e) In order to evaluate the regional center's compliance with its contract performance objectives and legal obligations related to those objectives, the department shall do both of the following:

(1) Annually assess each regional center's achievement of its previous year's objectives and make the assessment, including baseline data and performance objectives of the individual regional centers, available to the public. The department may make a special commendation of the regional centers that have best engaged the community in the development of contract performance objectives and have made the most meaningful progress in meeting or exceeding contract performance objectives.

(2) Monitor the activities of the regional center to ensure compliance with the provisions of its contracts, including, but not limited to, reviewing all of the following:

(A) The regional center's public process for compliance with the procedures sets forth in paragraph (2) of subdivision (c).

(B) Each regional center's performance objectives for compliance with the criteria set forth in paragraph (1) of subdivision (c).

(C) Any public comments on regional center performance objectives sent to the department or to the regional centers, and soliciting public input on the public process and final performance standards.

(f) The renewal of each contract shall be contingent upon compliance with the contract including, but not limited to, the performance objectives, as determined through the department's evaluation.

SEC. 35. Section 4631 of the Welfare and Institutions Code is amended to read:

4631. (a) In order to provide to the greatest extent practicable a larger degree of uniformity and consistency in the services, funding, and administrative practices of regional centers throughout the state, the State Department of Developmental Services shall, in consultation with the regional centers, adopt regulations prescribing a uniform accounting system, a uniform budgeting and encumbrancing system, a systematic approach to administrative practices and procedures, and a uniform reporting system which shall include:

(1) Number and costs of diagnostic services provided by each regional center.

(2) Number and costs of services by service category purchased by each regional center.

(3) All other administrative costs of each regional center.

(b) The department's contract with a regional center shall require strict accountability and reporting of all revenues and expenditures, and strict accountability and reporting as to the effectiveness of the regional center in carrying out its program and fiscal responsibilities as established herein.

(c) The Director of Developmental Services shall publish a report of the financial status of all regional centers and their operations by December 31 of each year. At a minimum, the report shall include each regional center's budget and actual expenditures for the previous fiscal year and each center's budget and projected expenditures for the current fiscal year.

SEC. 36. Section 4635 of the Welfare and Institutions Code is amended to read:

4635. (a) If any regional center finds that it is unable to comply with the requirements of this division or its contract with the state, the regional center shall be responsible for informing the

department immediately that it does not expect to fulfill its contractual obligations. Failure to provide the notification to the department in a timely manner shall constitute grounds for possible revocation or nonrenewal of the contract. If any regional center makes a decision to cancel or not renew its contract with the department, the regional center shall give a minimum of 90 days' written notice of its decision.

(b) (1) If the department finds that any regional center is not fulfilling its contractual obligations, the department shall make reasonable efforts to resolve the problem within a reasonable period of time with the cooperation of the regional center, including the action described in paragraph (2) of subdivision (b) of Section 4629 or renegotiation of the contract.

(2) If the department's efforts to resolve the problem are not successful, the department shall issue a letter of noncompliance. The letter of noncompliance shall state the noncompliant activities and establish a specific timeline for the development and implementation of a corrective action plan. The department shall approve the plan and monitor its implementation. Letters of noncompliance shall be made available to the public upon request. The letter of noncompliance shall not include privileged or confidential consumer information or information that would violate the privacy rights of regional center board members or employees. The department shall notify the appropriate area board and shall provide the area board with a copy of the corrective action plan, the timeline, and any other action taken by the department relating to the requirements for corrective action.

(c) If the department finds that any regional center continues to fail in fulfilling its contractual obligations after reasonable efforts have been made, and finds that other regional centers are able to fulfill similar obligations under similar contracts, and finds that it will be in the best interest of the persons being served by the regional center, the department shall take steps to terminate the contract and to negotiate with another governing board to provide regional center services in the area. These findings may also constitute grounds for possible nonrenewal of the contract in addition to, or in lieu of, other grounds.

(d) If the department makes a decision to cancel or not renew its contract with the regional center, the department shall give a minimum of 90 days' written notice of its decision, unless it has determined that the 90 days' notice would jeopardize the health or safety of the regional center's consumers, or constitutes willful misuse of state funds, as determined by the Attorney General. Within 14 days after receipt of the notice, the regional center may make a written protest to the department of the decision to terminate or not renew the contract. In that case, the department shall: (1) arrange to meet with the regional center and the appropriate area board within 30 days after receipt of the protest to discuss the decision and to provide

its rationale for the termination or nonrenewal of the contract, and to discuss any feasible alternatives to termination or nonrenewal, including the possibility of offering a limited term contract of less than one fiscal year; and (2) initiate the procedures for resolving disputes contained in Section 4632. To the extent allowable under state and federal law, any outstanding audit exceptions or other deficiency reports, appeals, or protests shall be made available and subject to discussion at the meeting arranged under clause (1).

(e) When terminating or not renewing a regional center contract and negotiating with another governing board for a regional center contract, the department shall do all of the following:

(1) Notify the area board, State Council on Developmental Disabilities, all personnel employed by the regional center, all service providers to the regional center, and all consumers of the regional center informing them that it proposes to terminate or not renew the contract with the regional center, and that the state will continue to fulfill its obligations to ensure a continuity of services, as required by state law, through a contract with a new governing board.

(2) Issue a request for proposals prior to selecting and negotiating with another governing board for a regional center contract. The local area board shall review all proposals and make recommendations to the department.

(3) Request the area board and any other community agencies to assist the state by locating or organizing a new governing board to contract with the department to operate the regional center in the area. Area boards shall cooperate with the department when that assistance is requested.

(4) Provide any assistance which may be required to ensure that the transfer of responsibility to a new regional center will be accomplished with minimum disruption to the clients of the service program.

(f) In no event shall the procedures for termination or nonrenewal of a regional center contract limit or abridge the state's authority to contract with any duly authorized organization for the purpose of service delivery, nor shall these procedures be interpreted to represent a continued contractual obligation beyond the limits of any fiscal year contract.

SEC. 37. Section 4640.6 of the Welfare and Institutions Code is amended to read:

4640.6. (a) In approving regional center contracts, the department shall ensure that regional center staffing patterns demonstrate that direct service coordination are the highest priority.

(b) Contracts between the department and regional centers shall require that regional centers implement an emergency response system that ensures that a regional center staff person will respond to a consumer, or individual acting on behalf of a consumer, within two hours of the time an emergency call is placed. This emergency

response system shall be operational 24 hours per day, 365 days per year.

(c) Contracts between the department and regional centers shall require regional centers to have case management consumer-to-staff ratios that reflect an overall average of 62 consumers to each staff member, and shall require regional centers to have, or contract for, all of the following areas:

(1) Criminal justice expertise to assist the regional center in providing services and support to consumers involved in the criminal justice system as a victim, defendant, inmate, or parolee.

(2) Special education expertise to assist the regional center in providing advocacy and support to families seeking appropriate educational services from a school district.

(3) Family support expertise to assist the regional center in maximizing the effectiveness of support and services provided to families.

(4) Housing expertise to assist the regional center in accessing affordable housing for consumers in independent or supportive living arrangements.

(5) Community integration expertise to assist consumers and families in accessing integrated services and supports and improved opportunities to participate in community life.

(6) Quality assurance expertise, to assist the regional center to provide the necessary coordination and cooperation with the area board in conducting quality-of-life assessments and coordinate the regional center quality assurance efforts.

(7) Each regional center shall employ at least one consumer advocate who is a person with developmental disabilities.

(8) Other staffing arrangements related to the delivery of services that the department determines are necessary to ensure maximum cost-effectiveness and to ensure that the service needs of consumers and families are met.

(d) Any regional center proposing a staffing arrangement that substantially deviates from an overall average of 62 consumers to each staff member, shall submit the proposal to the department for approval prior to implementation. In requesting departmental approval, the regional center shall describe, in detail, its proposed staffing arrangement and the reasons why the staffing arrangement is in the best interest of consumers and families served by the regional center, and shall demonstrate public support for the proposed staffing arrangement.

SEC. 38. Section 4681.3 of the Welfare and Institutions Code is amended to read:

4681.3. (a) Notwithstanding any other provision of this article, for the 1996–97 fiscal year, the rate schedule authorized by the department in operation June 30, 1996, shall be increased based upon the amount appropriated in the Budget Act of 1996 for that purpose.

The increase shall be applied as a percentage, and the percentage shall be the same for all providers.

(b) Notwithstanding any other provision of this article, for the 1997–98 fiscal year, the rate schedule authorized by the department in operation on June 30, 1997, shall be increased based upon the amount appropriated in the Budget Act of 1997 for that purpose. The increase shall be applied as a percentage, and the percentage shall be the same for all providers.

(c) Notwithstanding any other provision of this article, for the 1998–99 fiscal year, the rate schedule authorized by the department in operation on June 30, 1998, shall be increased commencing July 1, 1998, based upon the amount appropriated in the Budget Act of 1998 for that purpose. The increase shall be applied as a percentage, and the percentage shall be the same for all providers.

(d) Notwithstanding any other provision of this article, for the 1998–99 fiscal year, the rate schedule authorized by the department in operation on December 31, 1998, shall be increased January 1, 1999, based upon the cost-of-living adjustments in the Supplemental Security Income/State Supplementary Program for the Aged, Blind, and Disabled appropriated in the Budget Act of 1998 for that purpose. The increase shall be applied as a percentage and the percentage shall be the same for all providers.

SEC. 39. Section 4681.4 is added to the Welfare and Institutions Code, to read:

4681.4. (a) Notwithstanding any other provision of this article, for the 1998–99 fiscal year, the rate schedule increased pursuant to subdivision (d) of Section 4681.3 shall be increased by an additional amount on January 1, 1999, based upon the amount appropriated in the Budget Act of 1998 for that purpose. The rate increase permitted by this section shall be applied as a percentage, and the percentage shall be the same for all providers.

(b) Notwithstanding any other provision of this article, for the 1999–2000 fiscal year, the rate schedule authorized by the department in operation on December 31, 1999, shall be increased on January 1, 2000, based upon the amount appropriated in the Budget Act of 1999 for that purpose. The rate increase permitted by this section shall be applied as a percentage and the percentage shall be the same for all providers.

(c) In order to help reduce direct care staff turnover and improve overall quality of care in Alternative Residential Model (ARM) facilities, funds appropriated by the Budget Act of 1998 and the Budget Act of 1999 to increase facility rates effective January 1, 1999, excluding any additional funds appropriated due to increases in benefits under Article 5 (commencing with Section 12200) of Chapter 3 of Part 3 of Division 9, and January 1, 2000, respectively, shall be used only for any of the following:

(1) Increasing direct care staff salaries, wages, and benefits.

(2) Providing coverage while direct care staff are in training classes or taking a training or competency test pursuant to Section 4681.5.

(3) Other purposes approved by the director.

(d) ARM providers shall report to regional centers, in a format and frequency determined by the department, information necessary for the department to determine, through the regional center, compliance with subdivision (c), including, but not limited to, direct care staff salaries, wages, benefits, and staff turnover.

(e) The department shall adopt emergency regulations in order to implement this section, which shall include, but are not limited to, the following:

(1) A process for enforcing the requirements of subdivisions (c) and (d).

(2) Consequences to an ARM provider for failing to comply with the requirements of subdivisions (c) and (d), including a process for obtaining approval from the director for the expenditure of funds for other purposes, as permitted by paragraph (3) of subdivision (c).

(3) A process for adjudicating provider appeals.

SEC. 40. Section 4681.5 is added to the Welfare and Institutions Code, to read:

4681.5. (a) Each direct care staff person employed in an Alternative Residential Model (ARM) facility shall be required to satisfactorily complete two 35-hour competency-based training courses approved, after consultation with the Community Care Facility Direct Care Training Work Group, by the department or pass a department-approved competency test for each of the 35-hour training segments. Each direct care staff person to whom this subdivision applies shall demonstrate satisfactory completion of the competency-based training by passing a competency test applicable to that training segment.

(b) Each direct care staff person employed in an ARM facility prior to January 1, 1999, shall satisfactorily complete the first required competency-based training course or pass a department-approved competency test applicable to that training segment by March 31, 2000, and satisfactorily complete the second competency-based training course or pass a department-approved competency test applicable to that training segment by March 31, 2001.

(c) Each direct care staff person whose employment in an ARM facility commences on or after January 1, 1999, shall satisfactorily complete the first required competency-based training course or pass a department-approved competency test applicable to that training segment within one year from the date the staff person was hired, and satisfactorily complete the second competency-based training course or pass a department-approved competency test applicable to that training segment within two years from the date the person was hired.

(d) A direct care staff person who does not comply with the requirements of this section may not continue to provide direct care to consumers in ARM facilities, unless otherwise approved by the department pursuant to conditions for a waiver specified in regulations adopted pursuant to subdivision (e).

(e) The department shall adopt emergency regulations in order to implement this section. These regulations may include, but are not limited to, all of the following:

(1) Requirements for satisfactory completion of the 70 hours of direct care staff training.

(2) Provisions for enforcement of training requirements.

(3) Continuing education requirements beyond the initial 70 hours of required training.

(4) Provisions for waiving staff training and competency testing requirements, provided that waivers shall not adversely impact the health and safety of ARM facility consumers.

SEC. 41. Section 4690.2 of the Welfare and Institutions Code is amended to read:

4690.2. (a) The Director of Developmental Services shall develop program standards and establish, maintain, and revise, as necessary, an equitable process for setting rates of state payment, based upon those standards, for in-home respite services purchased by regional centers from agencies vendored to provide these services. The Director of Developmental Services may promulgate regulations establishing these standards and the process to be used for setting rates. "In-home respite services" means intermittent or regularly scheduled temporary nonmedical care and supervision provided in the client's own home, for a regional center client who resides with a family member. These services are designed to do all of the following:

(1) Assist family members in maintaining the client at home.

(2) Provide appropriate care and supervision to ensure the client's safety in the absence of family members.

(3) Relieve family members from the constantly demanding responsibility of caring for the client.

(4) Attend to the client's basic self-help needs and other activities of daily living including interaction, socialization, and continuation of usual daily routines which would ordinarily be performed by the family members.

(b) The provisions of subdivisions (b) to (f), inclusive, of Section 4691 and subdivisions (a) to (f), inclusive, and subdivision (h) of Section 4691.5 applicable to community-based day programs, shall also apply to in-home respite service vendors for the purpose of establishing standards and an equitable process for setting rates, except:

(1) The process specified in paragraph (4) of subdivision (a) of Section 4691.5 for increasing rates for fiscal year 1990–91 shall apply only to the administrative portion of the rate for eligible in-home

respite service vendors, and the amount of funds available for this increase shall not exceed three hundred thousand dollars ($300,000) of the total amount appropriated for rate increases. The administrative portion of the rate shall consist of the in-home respite service vendor's allowable costs, other than those for respite worker's salary, wage, benefits, and travel. Vendors eligible for this rate increase shall include only those in-home respite service vendors which received a deficiency adjustment in their permanent or provisional rate for fiscal year 1989–90, as specified in paragraph (4) of subdivision (a) of Section 4691.5.

(2) In addition, a rate increase shall also be provided for fiscal year 1990–91, for the salary, wage, and benefit portion of the rate for in-home respite service vendors eligible for the increase. The amount of funds available for this rate increase is limited to the remaining funds appropriated for this paragraph and paragraph (1) for fiscal year 1990–91. The amount of increase which each eligible in-home respite service vendor shall receive shall be limited to the amount necessary to increase the salary, wage, and benefit portion of the rate for respite workers to five dollars and six cents ($5.06) per hour in salary and wages plus ninety-five cents ($0.95) in benefits. Vendors eligible for this increase shall include only those in-home respite service vendors whose salary, wage, and benefit portion of their existing provisional or permanent rate, as established by the department for respite workers is below the amounts specified in this paragraph, and the vendor agrees to reimburse its respite workers at no less than these amounts during fiscal year 1990–91 and thereafter. In order to establish rates pursuant to this paragraph, existing programs receiving a permanent or provisional rate shall submit to the department, the program, cost, and other information specified by the department for either the 1988 calendar year, or for the 1988–89 fiscal year. The specified information shall be submitted on forms developed by the department, not later than 45 days following receipt of the required forms from the department, after the effective date of this section. Programs which fail to submit the required information within the time specified shall have payment of their permanent or provisional rate suspended until the required information has been submitted.

(3) Effective July 1, 1990, and pursuant to the rate methodology developed by the department, the administrative portion and the salary, wage, and benefit portion of the rates for in-home respite service vendors currently receiving a provisional or permanent rate shall be combined and paid as a single rate.

(4) Rate increases for fiscal year 1990–91 shall be limited to those specified in paragraphs (1) and (2). For fiscal year 1991–92 and all succeeding fiscal years, the provisions of subdivision (c) of Section 4691, which specify that any rate increases shall be subject to the appropriation of sufficient funds in the Budget Act, shall also apply to rates for in-home respite service vendors.

(5) For the 1998–99 fiscal year, an in-home respite service vendor shall receive rate increases pursuant to subdivision (e) of Section 4691.5. Any rate increase shall be subject to the appropriation of funds pursuant to the Budget Act.

(6) The rate methodology developed by the department may include a supplemental amount of reimbursement for travel costs of respite workers using their private vehicles to and from and between respite sites. The supplemental amount shall be the minimum rate for travel reimbursement for state employees.

SEC. 42. Section 4690.3 is added to the Welfare and Institutions Code, to read:

4690.3. (a) For the 1998–99 fiscal year, rates for in-home respite services agencies that are vendored pursuant to Section 4690.2 and the department's regulations to provide in-home respite services shall be increased based on the amount appropriated in the Budget Act of 1998 for the purpose of increasing the salary, wage, and benefit portion of the rate for in-home respite services workers. Agencies shall reimburse their respite workers at no less than the increased amount in their rate for the 1998–99 fiscal year and thereafter.

(b) For the 1998–99 fiscal years an individual who provides in-home respite services, pursuant to vendorization pursuant to the department's regulations, shall also receive a rate increase pursuant to subdivision (a).

SEC. 43. Section 4690.4 is added to the Welfare and Institutions Code, to read:

4690.4. (a) Sections 4690.2, 4691, and 4691.5, which relate to in-home respite service agencies and community-based day programs, shall apply in the 1998–99 fiscal year with the following exceptions:

(1) The 1997–98 fiscal year allowable costs and consumer attendance data submitted to the department by September 30, 1998, shall not be utilized by the department to determine a new mean rate and allowable range of rates, pursuant to regulations, but may be used only in developing a new rate system.

(2) The allowable range of rates and mean rate established for the 1997–98 fiscal year shall be continued.

(3) The rate for new programs shall be the mean rate determined for the same type of program and staff-to-consumer ratio for the 1997–98 fiscal year.

(b) The department shall, in consultation with stakeholder organizations, develop performance based consumer outcome rate systems for community-based day programs and in-home respite services. If rates for community-based day programs are increased in the 1998–99 fiscal year pursuant to paragraphs (1) to (3), inclusive, of subdivision (e) of Section 4691.5, and rates for in-home respite services are increased in the 1998–99 fiscal year pursuant to paragraph (5) of subdivision (b) of Section 4690.2, as added by the act adding this section to the Welfare and Institutions Code, then

effective September 1, 1998, and until such time as the new rate systems are implemented, or unless funds are otherwise appropriated for rate adjustments, rates shall be frozen.

SEC. 44. Section 4691.5 of the Welfare and Institutions Code is amended to read:

4691.5. The ratesetting methodology, to be established pursuant to subparagraph (C) of paragraph (3) of subdivision (b) of Section 4691 shall include, but need not be limited to, all of the following:

(a) A process for establishing rates during fiscal year 1990–91 for new programs and existing programs receiving a provisional or permanent rate.

(1) The rate for new programs shall be the mean rate determined for the same type of day program and staff-to-client ratio. This rate shall be a temporary rate. Determination of the mean rate for new programs shall be based on the program, cost, and other information of existing programs receiving a permanent rate, using allowable costs and client attendance information of those existing programs. In order to establish rates pursuant to this paragraph existing programs receiving a permanent rate shall submit to the department, the program, cost, and other information specified by the department for either calendar year 1988 or fiscal year 1988–89. The specified information shall be submitted on forms developed by the department, not later than 45 days following receipt of the required forms from the department, after the effective date of this section. Programs which fail to submit the required information within the time specified shall have payment of their permanent rate suspended until the required information has been submitted.

(2) Except as provided in paragraph (4) the rate for existing programs receiving a provisional rate, whose rate would otherwise expire during fiscal year 1990–91, shall be extended at the provisional rate until September 1, 1991.

(3) Except as provided in paragraph (4) below, the rate for existing programs receiving a permanent rate shall be reestablished at the permanent rate until June 30, 1991.

(4) The rate for existing programs receiving a provisional or permanent rate as specified in paragraph (2) and paragraph (3) shall be increased for all programs eligible for the increase. Eligible programs shall include only those programs which received a deficiency adjustment in their permanent or provisional rate for fiscal year 1989–90, based on calendar year 1988 program and cost information submitted to the department, pursuant to the stipulated order in the case of California Association of Rehabilitation Facilities et al. v. State of California, Sacramento County Superior Court Case No. 355326, and the adjustment was insufficient to fund the entire deficiency. The amount of funds available for the increase is limited to the one million dollars ($1,000,000) appropriated for that purpose for fiscal year 1990–91, and it shall be distributed proportionately among all eligible programs. The amount of increase which each

eligible program shall receive toward its remaining deficiency, based on calendar year 1988 program and cost information, shall be equal to the percentage that one million dollars ($1,000,000) represents of the total deficiency, based on calendar year 1988 program and cost information, for all eligible programs.

(b) A process for establishing rates during fiscal year 1991–92 for new programs and existing programs receiving a temporary, provisional, or permanent rate.

(1) The rate for existing programs receiving a permanent rate, shall be determined based on fiscal year 1989–90 program, cost, and other information submitted to the department and regional center. The ratesetting process shall include, but shall not be limited to, all of the following:

(A) A process for determination of a mean rate and an allowable range of rates for the same type of day program and staff-to-client ratio. The mean rate shall be determined using those programs' allowable costs and client attendance and the allowable range of rates shall be defined as the rates of those programs included between the 10th and 90th percentiles.

(B) The rates for existing programs receiving a permanent rate shall be increased or decreased to their allowable costs for fiscal year 1991–92, as follows:

(i) The rate shall be decreased if the program's allowable costs and client attendance, for fiscal year 1989–90, determined pursuant to the regulations, would result in a rate that is lower than its existing permanent rate.

(ii) The rate shall be increased if the program's allowable costs and client attendance for fiscal year 1989–90, determined pursuant to the regulations, would result in a rate that is higher than its existing permanent rate and its existing permanent rate is below or within the allowable range of rates.

(iii) No rate increase shall be provided that would result in the rate exceeding the allowable range of rates. No increase shall be provided for programs whose existing permanent rate is above the allowable range of rates. The amount of funds appropriated for that purpose for fiscal year 1991–92 shall be distributed only to those programs eligible for the increase.

(C) A process for the reduction or increase in the rate of any program whose existing permanent rate is not within the allowable range of rates. This process shall be based upon all of the following:

(i) For programs whose existing permanent rates are above the allowable range of rates, their existing permanent rate shall be reduced by 5 percent or to the allowable range, whichever is less.

(ii) For programs whose existing permanent rates are below the allowable range of rates, after the increase specified in clause (ii) of subparagraph (B) their rate shall be increased, up to the allowable range, in proportion to the amount of funds obtained from reducing the rate of programs whose rates are above the range.

(2) The rate for new programs shall be the mean rate determined pursuant to the process in paragraph (1) for the same type of day program and staff-to-client ratio using the program, cost, and other information submitted by providers receiving a permanent rate.

(3) The rate for existing programs receiving a provisional rate, whose rate expired during fiscal year 1990–91 and was extended until September 1, 1991, shall be determined pursuant to the process specified in paragraph (1) for permanent rates, except that the determination shall be based upon 12 consecutive months of representative costs incurred by the program during the period it was receiving its provisional rate. The program shall submit these costs and other program information, designated by the department, to the department within the time frames specified in the regulations. If the program has not incurred or cannot provide 12 consecutive months of representative costs, the department may determine the rate based on less than 12 consecutive months of representative costs.

(4) The rate for existing programs receiving a provisional rate, whose rate will expire in July or August of 1991, shall be extended until September 1, 1991, and then determined pursuant to the process specified in paragraph (3).

(c) A process for establishing rates during fiscal year 1992–93 for new programs and existing programs receiving a temporary or permanent rate:

(1) The rate for new programs shall be the mean rate, determined pursuant to the process in paragraph (2) of subdivision (b) for fiscal year 1991–92, for the same type of day program and staff-to-client ratio.

(2) The rate for existing programs receiving a temporary rate shall be continued at the rate established for fiscal year 1991–92, until the rate expires or a permanent rate is established pursuant to the process in paragraph (4) of subdivision (b) for fiscal year 1991–92.

(3) The rate for existing programs receiving a permanent rate shall be reestablished at the rate established for fiscal year 1991–92, except for programs whose rates are not within the allowable range of rates. For those programs whose rates are not within the allowable range, their rates shall be reduced or increased pursuant to the process in subparagraph (C) of paragraph (1) of subdivision (b) for fiscal year 1991–92.

(d) A process for establishing rates during fiscal year 1993–94 for new programs and existing programs receiving a temporary or permanent rate:

(1) The rate for existing programs receiving a permanent rate shall be determined based on fiscal year 1991–92 program, cost, and other information submitted to the department and regional center. The ratesetting process shall include the process specified in paragraph (1) of subdivision (b) for fiscal year 1991–92, except that the allowable range of rates shall be determined by computing 50

percent of the mean rate for fiscal year 1993–94 and converting that amount into a range of rates, distributed equally above and below the mean. This process shall compare the range of rates computed for fiscal year 1993–94 with the range of rates calculated for fiscal year 1991–92 based on 80 percent of the programs, and shall use the lesser of the two ranges in the comparison as the allowable range of rates. Once established, this range shall be permanent.

(2) The rate for new programs shall be the mean rate determined pursuant to the process in paragraph (1) for the same type of day program and staff-to-client ratio using the program, cost, and other information submitted by providers receiving a permanent rate.

(3) The rate for existing programs receiving a temporary rate shall be continued at the established rate until the program has incurred 12 consecutive months of representative costs within the timeframes specified in the regulations. Once the representative costs have been incurred, the rate shall be determined pursuant to the process specified in paragraph (1) for permanent rates.

(e) A process for establishing rates, during fiscal year 1994–95 and each alternative fiscal year thereafter, for new programs and existing programs receiving a temporary or permanent rate. The process shall be the same as that specified in subdivision (c) for determining, continuing, and reestablishing rates, but shall be based on the program, cost, and other information submitted to the department and regional center for establishment of rates for fiscal year 1993–94 and each alternative fiscal year thereafter, except for the following:

(1) For the 1998–99 fiscal year, the rates for existing community-based day programs receiving a permanent rate shall be increased if the program's allowable costs and client attendance, for the 1995–96 fiscal year, determined pursuant to the regulations, would result in a rate that is higher than its existing permanent rate and its existing permanent rate is below or within the allowable range of rates. The rate shall not be decreased if the program's allowable costs and client attendance for the 1995–96 fiscal year, determined pursuant to the regulations, would result in a rate that is lower than its existing permanent rate.

(2) For the 1998–99 fiscal year, existing community-based day programs receiving a permanent rate, and whose permanent rate is still below the lower limit of the allowable range of rates for like programs after receiving an increase pursuant to paragraph (1), shall receive an increase in their permanent rate up to the lower limit of the allowable range of rates.

(3) The requirements of subdivision (c) of Section 4691, which specify that any rate increases shall be subject to the appropriation of sufficient funds in the Budget Act, shall also apply to rates governed by paragraphs (1) and (2).

(f) A process for establishing rates, during fiscal year 1995–96 and each alternative fiscal year thereafter, for new programs and existing programs receiving a temporary or permanent rate. The process

shall be the same as that specified in subdivision (d) except for the following:

(1) The rate for programs receiving a permanent rate shall be based on program, cost, and other information submitted to the department and regional center for fiscal year 1993–94 and each alternative fiscal year thereafter.

(2) The allowable range of rates, permanently established during fiscal year 1993–94, shall be applied to the mean rate determined for fiscal year 1995–96 and each alternative fiscal year thereafter.

(3) Existing programs receiving a permanent rate whose rates are not within the allowable range of rates shall, by September 1, 1995, have their rates reduced or increased as follows:

(A) For programs whose existing permanent rates are above the allowable range of rates, their rate shall be reduced to the allowable range.

(B) For programs whose existing rates are below the allowable range of rates, their rate shall be increased up to the allowable range in proportion to the amount of funds obtained from reducing the rate of programs whose rates are above the range.

(g) A process for establishing a uniform supplemental rate of reimbursement for programs serving nonambulatory clients, as determined by the department.

(h) A process for notifying the program of the established rate.

SEC. 45. Section 4701 of the Welfare and Institutions Code is amended to read:

4701. "Adequate notice" means a written notice informing the applicant, recipient, and authorized representative of at least all of the following:

(a) The action that the service agency proposes to take, including a statement of the basic facts upon which the service agency is relying.

(b) The reason or reasons for that action.

(c) The effective date of that action.

(d) The specific law, regulation, or policy supporting the action.

(e) The responsible state agency with whom a state appeal may be filed, including the address of the state agency director.

(f) Information on availability of advocacy assistance, including referral to the state hospital or regional center clients' rights advocate, area board, publicly funded legal services corporations, and other publicly or privately funded advocacy organizations, including the protection and advocacy system required under federal Public Law 95-602, the Developmental Disabilities Assistance and Bill of Rights Act.

(g) The fair hearing procedure, including deadlines, access to service agency records under Article 5 (commencing with Section 4725), and the availability of mediation which shall be voluntary for both the claimant and the service agency.

(h) An explanation that a request for mediation may constitute a waiver of the rights of a medicaid home and community-based waiver participant to receive a fair hearing decision within 90 days of the date the hearing request form is postmarked or received by the service agency, whichever is earlier, as specified in subdivision (c) of Section 4711.5.

(i) That if a request for a fair hearing by a recipient is postmarked or received by a service agency no later than 10 days after receipt of the notice of the proposed action mailed pursuant to subdivision (a) of Section 4710, current services shall continue as provided in Section 4715. The notice shall be in clear, nontechnical language in English. If the claimant or authorized representative does not comprehend English, the notice shall be provided in such other language as the claimant or authorized representative comprehends.

(j) A statement indicating whether the recipient is a participant in the home and community-based services waiver.

SEC. 46. Section 4702.6 of the Welfare and Institutions Code is amended to read:

4702.6. "Hearing request form" means a document that shall include the name, address, and birth date of the claimant, date of request, reason for the request, and name, address, and relationship to the claimant of the authorized representative, if any, and whether the claimant is a participant in the medicaid home and community-based waiver. The hearing request form shall also indicate whether the claimant or his or her authorized representative is requesting mediation. A copy of the appointment of the authorized representative, by the claimant or the area board if any, shall also be included.

SEC. 47. Section 4704 of the Welfare and Institutions Code is amended to read:

4704. "Service agency" means any developmental center or regional center that receives state funds to provide services to persons with developmental disabilities.

SEC. 48. Section 4704.5 of the Welfare and Institutions Code is amended to read:

4704.5. For purposes of Sections 4710.9, 4711, 4711.5, 4711.7, 4712, and 4712.5, the director of the responsible state agency includes a designee thereof, which may, but need not, be a public or private agency that contracts with the State Department of Developmental Services for the provision of hearing officers or mediators.

SEC. 49. Section 4705 of the Welfare and Institutions Code is amended to read:

4705. (a) Every service agency shall, as a condition of continued receipt of state funds, have an agency fair hearing procedure for resolving conflicts between the service agency and recipients of, or applicants for, service. The State Department of Developmental Services shall promulgate regulations to implement this chapter by July 1, 1999, which shall be binding on every service agency.

Any public or private agency receiving state funds for the purpose of serving persons with developmental disabilities not otherwise subject to the provisions of this chapter shall, as a condition of continued receipt of state funds, adopt and periodically review a written internal grievance procedure.

(b) An agency that employs a fair hearing procedure mandated by any other statute shall be considered to have an approved procedure for purposes of this chapter.

(c) The service agency's mediation and fair hearing procedure shall be stated in writing, in English and any other language that may be appropriate to the needs of the consumers of the agency's service. A copy of the procedure and a copy of the provisions of this chapter shall be prominently displayed on the premises of the service agency.

(d) All recipients and applicants, and persons having legal responsibility for recipients or applicants, shall be informed verbally of, and shall be notified in writing in a language which they comprehend of, the service agency's mediation and fair hearing procedure when they apply for service, when they are denied service, and when notice of service modification is given pursuant to Section 4710.

(e) If, in the opinion of any person, the rights or interests of a claimant who has not personally authorized a representative will not be properly protected or advocated, the local area board and the clients' right advocate assigned to the regional center shall be notified, and the area board may appoint a person or agency as representative, pursuant to Section 4590, to assist the claimant in the mediation and fair hearing procedure. The appointment shall be in writing to the authorized representative and a copy of the appointment shall be immediately mailed to the service agency director.

SEC. 50. Section 4706 is added to the Welfare and Institutions Code, to read:

4706. (a) Except as provided in subdivision (b) to the extent permitted by federal law, all issues concerning the rights of persons with developmental disabilities to receive services under this division shall be decided under this chapter, including those issues related to fair hearings, provided under the medicaid home- and community-services waiver granted to the State Department of Health Services.

(b) Whenever a fair hearing under this chapter involves services provided under the medicaid home- and community-based services waiver, the State Department of Health Services shall retain the right, as provided in Section 4712.5, to review and modify any decision reached under this chapter.

SEC. 51. Section 4707 is added to the Welfare and Institutions Code, to read:

4707. By July 1, 1999, the State Department of Developmental Services shall implement a mediation process for resolving conflicts

between regional centers and recipients of services specified in this chapter. Regulations implementing the mediation process shall be adopted by July 1, 2000.

SEC. 52. Section 4710.5 of the Welfare and Institutions Code is amended to read:

4710.5. (a) Any applicant for or recipient of services, or authorized representative of the applicant or recipient, who is dissatisfied with any decision or action of the service agency which he or she believes to be illegal, discriminatory, or not in the recipient's or applicant's best interests, shall, upon filing a request within 30 days after notification of the decision or action complained of, be afforded an opportunity for a fair hearing. An opportunity for mediation shall also be offered at this time.

(b) The request for a fair hearing and for mediation shall be stated in writing on a hearing request form provided by the service agency.

(c) If any person makes a request for mediation or a fair hearing other than on the hearing forms, the employee of the service agency who hears or receives the request shall provide the person with a hearing request form and shall assist the person in filling out the form if the person requires or requests assistance. Any employee who willfully fails to comply with this requirement shall be guilty of a misdemeanor.

(d) The hearing request form shall be directed to the director of the service agency responsible for the action complained of under subdivision (a). The service agency director shall simultaneously send a copy of the hearing request form to the department and the director of the responsible state agency or his or her designee pursuant to Section 4704.5 within five days of the service agency director's receipt of the request. The department shall keep a file of all hearing request forms.

SEC. 53. Section 4710.6 of the Welfare and Institutions Code is amended to read:

4710.6. (a) Upon receipt by the service agency director of the hearing request form, the service agency director shall immediately notify in writing the claimant, the claimant's guardian or conservator, parent of a minor, and authorized representative of the claimant's fair hearing rights in connection with the fair hearing, and, if mediation or an informal meeting has been requested, with those procedures, including:

(1) The opportunity to be present in all proceedings and to present written and oral evidence.

(2) The opportunity to confront and cross-examine witnesses.

(3) The right to appear in person with counsel or other representatives of his or her own choosing.

(4) The right to access to records pursuant to Article 5 (commencing with Section 4725).

(5) The right to an interpreter.

(b) The written notification of rights pursuant to subdivision (a) shall also include the following:

(1) Information on availability of advocacy assistance, including referral to the state hospital or regional center clients' rights advocate, area board, publicly funded legal services corporations, and other publicly or privately funded advocacy organizations, including the protection and advocacy system required under federal Public Law 95-602, the Developmental Disabilities Assistance and Bill of Rights Act.

(2) The proposed date, time and place for a voluntary informal meeting, if desired by the claimant or his or her authorized representative, with the service agency director or the director's designee.

(3) Information that if a voluntary informal meeting is requested by the claimant, it shall be held within 10 days of the date the hearing request form is postmarked or received by the service agency, whichever is earlier.

(4) The option of requesting mediation prior to a fair hearing, as provided in Section 4711.5. Nothing in this section shall preclude the claimant or his or her authorized representative from proceeding directly to a fair hearing in the event that mediation is unsuccessful.

(c) The fair hearing shall be completed and a final administrative decision rendered within 90 days of the date the hearing request form is postmarked or received by the service agency, whichever is earlier, unless the fair hearing request has been withdrawn or the time period has been extended in accordance with this chapter.

(d) Prior to a voluntary informal meeting, voluntary mediation or a fair hearing, the claimant or his or her authorized representative shall have the right to examine any or all documents contained in the individual's service agency file. Access to records shall be provided pursuant to Article 5 (commencing with Section 4725).

SEC. 54. Section 4710.7 of the Welfare and Institutions Code is amended to read:

4710.7. (a) Immediately upon receipt of the hearing request form, the service agency director, or his or her designee shall offer in writing to meet informally with the claimant and his or her authorized representative to resolve the issue or issues that are the subject of the fair hearing. The written notice shall state that the claimant or his or her authorized representative may decline an informal meeting.

(b) If an informal meeting is held, it shall be conducted by the service agency director or his or her designee. The service agency director or his or her designee shall notify the applicant or recipient and his or her authorized representative of the decision of the informal meeting in writing within five days of the meeting.

(c) The written decision of the service agency director or his or her designee shall:

(1) Identify the issues presented by the appeal.

(2) Rule on each issue identified.

(3) State the facts supporting each ruling.

(4) Identify the laws, regulations, and policies upon which each ruling is based.

(5) Explain the procedure for appealing the service agency director's decision to the responsible state agency director.

(d) Prior to the meeting, the claimant or his or her authorized representative shall have the right to examine any documents contained in the individual's service agency file. Access to records shall be provided pursuant to Article 5 (commencing with Section 4725).

SEC. 55. Section 4710.8 of the Welfare and Institutions Code is amended to read:

4710.8. (a) At an informal meeting, the claimant shall have the rights stated pursuant to subdivision (a) of Section 4710.6.

(b) An informal meeting shall be held at a time and place reasonably convenient to the claimant and the authorized representative.

(c) An informal meeting shall be conducted in the English language. However, if the claimant, the claimant's guardian or conservator, the parent of a minor claimant, or the authorized representative does not understand English, an interpreter shall be provided who is competent and acceptable to both the person requiring the interpreter and the service agency director or the director's designee. Any cost of an interpreter shall be borne by the service agency.

SEC. 56. Section 4710.9 of the Welfare and Institutions Code is repealed.

SEC. 57. Section 4710.9 is added to the Welfare and Institutions Code, to read:

4710.9. (a) If the claimant or his or her authorized representative is satisfied with the decision of the service agency following an informal meeting, he or she shall withdraw the request for a hearing on the matter decided. The decision of the service agency shall go into effect 10 days after the receipt of the withdrawal of the request for a fair hearing by the service agency. The service agency shall immediately forward a copy of the withdrawal to the department and to the director of the responsible state agency or his or her designee pursuant to Section 4704.5.

(b) If the claimant or his or her authorized representative has declined an informal meeting or is dissatisfied with the decision of the service agency and does not request mediation, the matter shall proceed to a fair hearing. The service agency shall immediately notify the director of the responsible state agency that the fair hearing request has not been withdrawn. A recommendation for consolidation pursuant to Section 4712.2 to the director of the responsible state agency may be made at this time.

SEC. 58. Section 4711 of the Welfare and Institutions Code is amended to read:

4711. Upon receipt of the hearing request form, where a fair hearing has been requested but mediation has not, the responsible state agency director shall immediately notify the claimant, the claimant's legal guardian or conservator, the parent of a minor claimant, the claimant's authorized representative, and the service agency director in writing of all the followinginformation applicable to fair hearings. Where the hearing request form contains a request for a fair hearing and mediation, the notifications shall be made separately, and each notice shall contain only the information applicable to the particular type of proceeding.

(a) The time, place, and date of the fair hearing or mediation, as applicable, if agreed to by the service agency.

(b) The rights of the parties at the fair hearing pursuant to Section 4710.6 or mediation, as applicable, pursuant to Section 4711.5.

(c) The availability of advocacy assistance pursuant to paragraph (1) of subdivision (b) of Section 4710.6 for both mediation and fair hearings.

(d) The name, address, and telephone number of the persons or offices designated by the director of the responsible state agency, as applicable, to conduct fair hearings, mediate disputes, and to receive requests for continuance or consolidation.

SEC. 59. Section 4711.5 is added to the Welfare and Institutions Code, to read:

4711.5. (a) Upon receipt of the written request for mediation, the service agency shall be given five days to accept or decline mediation.

(b) If the service agency declines mediation, the notice of that decision shall be sent immediately to the claimant, his or her authorized representative, and the director of the responsible state agency.

(c) (1) If the service agency accepts mediation, the service agency shall immediately send notice of that decision to the claimant, his or her authorized representative, and the director of the responsible state agency.

(2) Within five days after the receipt of the notice of the service agency's decision regarding mediation, the responsible state agency or the designee of the responsible state agency shall notify the claimant, his or her authorized representative, and the service agency of the information applicable to voluntary mediation specified in Section 4711. The mediation shall be held within 20 days of the date the hearing request form is postmarked or received by the service agency, whichever is earlier, unless a continuance is granted to the claimant at the discretion of the mediator.

(3) A continuance granted pursuant to paragraph (2) shall constitute a waiver of medicaid home and community-based services of the participant's right to a decision within 90 days of the date the

hearing request form is postmarked or received by the service agency, whichever is earlier. The extension of time for the final decision resulting from the continuance shall only be as long as the time period of the continuance.

(d) Mediation shall be conducted in an informal, nonadversarial manner, and shall incorporate the rights of the claimant contained in Section 4710.6.

(e) The State Department of Developmental Services shall contract with the mediators that meet the following requirements:

(1) Familiarity with the provisions of this division and implementing regulations, familiarity with the process of reconciling differences in a nonadversarial, informal manner.

(2) The person is not in the business of providing or supervising services provided to regional centers or to regional center consumers.

(f) During the course of the mediation, the mediator may meet separately with the participants to the mediation, and may speak with any party or parties confidentially in an attempt to assist the parties to reach a resolution that is acceptable to all parties.

(g) The mediator shall voluntarily disqualify himself or herself and withdraw from any case in which he or she cannot be fair and impartial. Any party may request the disqualification of the mediator by filing an affidavit, prior to the voluntary mediation, stating with particularity the grounds upon which it is claimed that a fair and impartial mediation cannot be accorded. The issue shall be decided by the mediator.

(h) Either the service agency or the claimant or his or her authorized representative may withdraw at any time from the mediation and proceed to a fair hearing.

SEC. 60. Section 4711.7 is added to the Welfare and Institutions Code, to read:

4711.7. (a) If the issue or issues involved in the mediation are resolved to the satisfaction of both parties, the mediator shall prepare a written resolution. Agreement of the claimant or his or her authorized representative to the final solution shall be accompanied by a withdrawal, in writing, of the fair hearing request. The final resolution shall go into effect 10 days after receipt of the withdrawal of the request for a fair hearing by the service agency. The mediator shall immediately forward a copy of the withdrawal to the director of the responsible state agency.

(b) If the mediation fails to resolve an issue or issues to the satisfaction of the claimant, or his or her authorized representative, the matter shall proceed to fair hearing with respect to the unresolved issue or issues as provided under this chapter, and the mediator shall immediately notify the director of the responsible state agency of the outcome of the mediation.

SEC. 61. Section 4712 of the Welfare and Institutions Code is amended to read:

4712. (a) The fair hearing shall be held within 50 days of the date the hearing request form is postmarked or received by the service agency, whichever is earlier, unless a continuance based upon a showing of good cause has been granted to the claimant. The service agency may also request a continuance based upon a showing of good cause, provided that the granting of the continuance does not extend the time period for rendering a final administrative decision beyond the 90-day period provided for in this chapter. For purposes of this section, good cause includes, but is not limited to, the following circumstances:

(1) Death of a spouse, parent, child, brother, sister, grandparent of the claimant or authorized representative, or legal guardian or conservator of the claimant.

(2) Personal illness or injury of the claimant or authorized representative.

(3) Sudden and unexpected emergencies, including, but not limited to, court appearances of the claimant or authorized representative, conflicting schedules of the authorized representative if the conflict is beyond the control of the authorized representative.

(4) Unavailability of a witness or evidence, the absence of which would result in serious prejudice to the claimant.

(5) An intervening request by the claimant or his or her authorized representative for mediation.

(b) Notwithstanding Sections 19130, 19131, and 19132 of the Government Code, the department shall contract for the provision of independent hearing officers. Hearing officers shall have had at least two years of full-time legal training at a California or American Bar Association accredited law school or the equivalent in training and experience as established by regulations to be promulgated by the department pursuant to Section 4705. These hearing officers shall receive training in the law and regulations governing services to developmentally disabled individuals and administrative hearings. The State Department of Developmental Services shall seek the advice of the State Council on Developmental Disabilities in the development of training materials and the implementation of training procedures by the department.

(c) The hearing officer shall not be an employee, agent, board member, or contractor of the service agency against whose action the appeal has been filed, or a spouse, parent, child, brother, sister, grandparent, legal guardian, or conservator of the claimant, or any person who has a direct financial interest in the outcome of the fair hearing, or any other interest which would preclude a fair and impartial hearing.

(d) When requested by the hearing officer, a service agency shall provide information relevant to the matter under appeal to the hearing officer prior to the fair hearing. Immediate notice of the documents provided to the hearing officer shall be mailed by the

service agency to the claimant and the authorized representative, either of whom may submit additional documentation to the hearing officer prior to the hearing.

(e) The fair hearing shall be held at a time and place reasonably convenient to the claimant and the authorized representative.

(f) Merits of a pending fair hearing shall not be discussed between the hearing officer and a party outside the presence of the other party.

(g) The hearing officer shall voluntarily disqualify himself or herself and withdraw from any case in which he or she cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification of the hearing officer by filing an affidavit, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. The issue shall be decided by the hearing officer.

(h) Both parties to the fair hearing shall have the rights specified in subdivision (a) of Section 4710.6.

(i) The fair hearing need not be conducted according to the technical rules of evidence and those related to witnesses. Any relevant evidence shall be admitted. All testimony shall be under oath or affirmation which the hearing officer is empowered to administer.

(j) A recording shall be made of the proceedings before the hearing officer. Any cost of recording shall be borne by the responsible state agency.

(k) The fair hearing shall be conducted in the English language. However, if the claimant, the claimant's guardian or conservator, parent of a minor claimant, or authorized representative does not understand English, an interpreter shall be provided by the responsible state agency.

(*l*) The fair hearing shall be open to the public except at the request of the claimant or authorized representative or when personnel matters are being reviewed.

SEC. 62. Section 4712.5 of the Welfare and Institutions Code is amended to read:

4712.5. (a) Except as provided in subdivision (c), within 10 days of the concluding day of the state hearing, but not later than 80 days following the date the hearing request form was postmarked or received, whichever is earlier, the hearing officer shall render a written decision and shall transmit the decision to each party and to the director of the responsible state agency, along with notification that this is the final administrative decision, that each party shall be bound thereby, and that either party may appeal the decision to a court of competent jurisdiction within 90 days of the receiving notice of the final decision.

(b) The hearing officer's decision shall be in ordinary and concise language and shall contain a summary of the facts, a statement of the evidence from the proceedings that was relied upon, a decision on

each of the issues presented, and an identification of the statutes, regulations, and policies supporting the decision.

(c) Where the decision involves an issue arising from the federal home- and community-based service waiver program, the hearing officer's decision shall be a proposed decision submitted to the Director of Health Services as the single state agency for the medicaid program. Within 90 days following the date the hearing request form is postmarked or received, whichever is earlier, the director may adopt the decision as written or decide the matter on the record. If the Director of Health Services does not act on the proposed decision within 90 days, the decision shall be deemed to be adopted by the Director of Health Services. The final decision shall be immediately transmitted to each party, along with the notice described in subdivision (a). If the decision of the Director of Health Services differs from the proposed decision of the hearing officer, a copy of that proposed decision shall also be served upon each party.

SEC. 63. Section 4712.7 is added to the Welfare and Institutions Code, to read:

4712.7. In addition to any other delegation of authority granted to the Director of Health Services, the director may delegate his or her authority to adopt final decisions under this chapter to hearing officers described in subdivision (b) of Section 4712 to the extent deemed appropriate by the director. The delegation shall be in writing.

SEC. 64. Section 4715 of the Welfare and Institutions Code is amended to read:

4715. (a) Except as otherwise provided in this section, if a request for a hearing is postmarked or received by the service agency no later than 10 days after receipt of the notice of the proposed action mailed pursuant to subdivision (a) of Section 4710, services that are being provided pursuant to a recipient's individual program plan shall be continued during the appeal procedure up to and including the 10th day after receipt of any of the following:

(1) Receipt by the service agency, following an informal meeting, of the withdrawal of the fair hearing request pursuant to Section 4710.9.

(2) Receipt by the service agency, following mediation, of the withdrawal of the fair hearing request pursuant to subdivision (a) of Section 4711.4.

(3) Receipt by the recipient of the final decision of the hearing officer or single stage agency pursuant to subdivisions (a) and (c) of Section 4712.5.

(b) Services continued pursuant to subdivision (a) may be modified by agreement of the parties in accordance with the decision of the interdisciplinary team and the individual program plan.

(c) Any appeal to a court by either party shall not operate as a stay of enforcement of the final administrative decision, provided that

either party may seek a stay of enforcement from any court of competent jurisdiction.

SEC. 65. Section 5328.35 is added to the Welfare and Institutions Code, to read:

5328.35. The State Department of Mental Health shall develop policies and procedures no later than 30 days after the effective date of the Budget Act of 1998, at each state hospital, to notify Members of the Legislature who represent the district in which the state hospital is located, local law enforcement, and designated local government officials in the event of a patient escape or walkaway.

SEC. 66. Section 5586 is added to the Welfare and Institutions Code, to read:

5586. During the 1998–99 fiscal year, the Metropolitan State Hospital shall, at a minimum, collect data on the use of medications, and the use of restraint and seclusion, including the number and duration of restraint and seclusion incidents, in the youth program. This information shall be provided to the State Department of Mental Health Deputy Director of Long-Term Care Services and the appropriate policy committees and the fiscal committees of the Legislature on a quarterly basis.

SEC. 67. Section 5587 is added to the Welfare and Institutions Code, to read:

5587. The Metropolitan State Hospital Youth Program's admission policy shall require the referring agency to document all placement attempts prior to admission. The youth program's discharge planning policy shall require the referring agency to document all attempts to place the child during the discharge planning process.

SEC. 68. Section 11265.9 is added to the Welfare and Institutions Code, to read:

11265.9. Whenever aid to an individual or family is discontinued under this chapter for any reason other than fraud, the department shall include, in the notice of termination of aid, a brief summary of the requirements for transitional Medi-Cal benefits provided for pursuant to Sections 14005.8, 14005.81, and 14005.85, and Section 50243 of Title 22 of the California Code of Regulations, as well as a form that the individual or family may fill out and return to request transitional Medi-Cal benefits.

SEC. 69. Section 14005.30 of the Welfare and Institutions Code is repealed.

SEC. 70. Section 14005.30 is added to the Welfare and Institutions Code, to read:

14005.30. (a) (1) To the extent that federal financial participation is available, Medi-Cal benefits under this chapter shall be provided to individuals eligible for services under Section 1396u-1 of Title 42 of the United States Code, including any options under Section 1396u-1(b)(2)(C) made available to and exercised by the state.

(2) The department shall exercise its option under Section 1396u-1(b)(2)(C) of Title 42 of the United States Code to adopt less restrictive income and resource eligibility standards and methodologies to the extent necessary to allow all recipients of benefits under Chapter 2 (commencing with Section 11200) to be eligible for Medi-Cal under paragraph (1).

(b) To the extent that federal financial participation is available, the department shall exercise its option under Section 1396u-1(b)(2)(C) of Title 42 of the United States Code as necessary to expand eligibility for Medi-Cal under subdivision (a) by establishing the amount of countable resources individuals or families are allowed to retain at the same amount medically needy individuals and families are allowed to retain, except that a family of one shall be allowed to retain countable resources in the amount of three thousand dollars ($3,000).

(c) Subdivision (b) shall be applied retroactively to January 1, 1998.

(d) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department shall implement, without taking regulatory action, subdivisions (a) and (b) of this section by means of an all county letter or similar instruction. Thereafter, the department shall adopt regulations in accordance with the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. Beginning six months after the effective date of this section, the department shall provide a status report to the Legislature on a semiannual basis until regulations have been adopted.

SEC. 71. Section 14005.8 of the Welfare and Institutions Code is amended to read:

14005.8. (a) (1) To the extent required by Subchapter XIX (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code and regulations adopted pursuant thereto, a family who was receiving aid pursuant to a state plan approved under Part A of Subchapter IV (commencing with Section 601) of Title 42 of the United States Code in at least three of the six months immediately preceding the month in which that family became ineligible for that assistance due to increased hours of employment, income from employment, or the loss of earned income disregards, shall remain eligible for health care services as provided in this chapter during the immediately succeeding six-month period.

(2) The department shall terminate extensions of health care services authorized by paragraph (1) as required under federal law.

(b) The department shall notify persons eligible under subdivision (a) of their right to continued health care services for each six-month period and a description of their reporting requirement, and the circumstances under which the extension may

be terminated. The notice shall also include a Medi-Cal card or other evidence of entitlement to those services.

(c) Notwithstanding any other provision of this section, the department, in conformance with federal law, shall offer beneficiaries covered under subdivision (a) the option of remaining eligible for health care services provided in this chapter for an additional extension period of six months. Health services shall be continued in as automatic a manner as permitted by federal law, and without any unnecessary paperwork.

(d) During the initial extension period and any additional six-month extension period, the department, consistent with federal law, may, whenever the department determines it to be cost-effective, elect to pay a family's expenses for premiums, deductibles, coinsurance, or similar costs for health insurance or other health coverage offered by an employer of the caretaker relative or by an employer of the absent parent of the dependent child. If, during the additional six-month extension period, the department elects to pay health premiums and this coverage exists, the beneficiary may be given the opportunity to express his or her preference between continuing the Medi-Cal coverage or obtaining health insurance.

(e) During the additional six-month extension period, the department may impose a premium for the health insurance or other health coverage consistent with Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) if the department determines that the imposition of a premium is cost-effective.

(f) The department shall adopt emergency regulations in order to comply with mandatory provisions of Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) for extension of medical assistance. These regulations shall become effective immediately upon filing with the Secretary of State.

(g) This section shall become operative April 1, 1990.

SEC. 72. Section 14005.81 of the Welfare and Institutions Code is repealed.

SEC. 73. Section 14005.81 is added to the Welfare and Institutions Code, to read:

14005.81. (a) Effective October 1, 1998, in addition to the two six-month periods of transitional Medi-Cal benefits provided in Section 14005.8, the state shall fund and provide one additional 12-month period of transitional Medi-Cal to persons age 19 years and older who have received 12 months of transitional Medi-Cal under Section 14005.8 and who continue to meet the requirements applicable to the additional six-month extension period provided for in Section 14005.8. The benefits provided under this section shall commence on the day following the last day of receipt of benefits under Section 14005.8.

(b) In the case of an alien who has received 12 months of transitional Medi-Cal under Section 14005.8, the benefits provided

under this section shall be limited to those benefits that would be available to that person under Section 14005.8.

(c) It is the intent of the Legislature that the department seek a mechanism for securing federal financial participation in connection with pregnancy-related benefits provided under this section.

SEC. 74. Section 14005.82 of the Welfare and Institutions Code is repealed.

SEC. 75. Section 14005.83 of the Welfare and Institutions Code is repealed.

SEC. 76. Section 14016.11 of the Welfare and Institutions Code is repealed.

SEC. 77. Section 14016.5 of the Welfare and Institutions Code is amended to read:

14016.5. (a) At the time of determining or redetermining the eligibility of a Medi-Cal or aid to families with dependent children (AFDC) applicant or beneficiary who resides in an area served by a managed health care plan or pilot program in which beneficiaries may enroll, each applicant or beneficiary shall personally attend a presentation at which the applicant or beneficiary is informed of the managed care and fee-for-service options available regarding methods of receiving Medi-Cal benefits. The county shall ensure that each beneficiary or applicant attends this presentation.

(b) The health care options presentation described in subdivision (a) shall include all of the following elements:

(1) Each beneficiary or eligible applicant shall be informed that he or she may choose to continue an established patient-provider relationship in the fee-for-service sector.

(2) Each beneficiary or eligible applicant shall be provided with the name, address, and telephone number of each primary care provider, by specialty, or clinic participating in each prepaid managed health care plan, pilot project, or fee-for-service case management provider option. The name, address, and telephone number of each specialist participating in each prepaid managed care health plan, pilot project, or fee-for-service case management provider option shall be made available by either contacting the health care options contractor or the prepaid managed care health plan, pilot project, or fee-for-service case management provider.

(3) Each beneficiary or eligible applicant shall be informed that he or she may choose to continue an established patient-provider relationship in a managed care option, if his or her treating provider is a primary care provider contracting with any of the prepaid managed health care plans, pilot projects, or fee-for-service case management provider options available, has available capacity, and agrees to continue to treat that beneficiary or applicant.

(4) In areas specified by the director, each beneficiary or eligible applicant shall be informed that if he or she fails to make a choice, or does not certify that he or she has an established relationship with a primary care provider or clinic, he or she shall be assigned to, and

enrolled in, a prepaid managed health care plan, pilot projects, or fee-for-service case management provider.

(c) No later than 30 days following the date a Medi-Cal or AFDC beneficiary or applicant is determined eligible, the beneficiary or applicant shall indicate his or her choice in writing, as a condition of coverage for Medi-Cal benefits, of either of the following health care options:

(1) To obtain benefits by receiving a Medi-Cal card, which may be used to obtain services from individual providers, that the beneficiary would locate, who choose to provide services to Medi-Cal beneficiaries.

The department may require each beneficiary or eligible applicant, as a condition for electing this option, to sign a statement certifying that he or she has an established patient-provider relationship, or in the case of a dependent, the parent or guardian shall make that certification. This certification shall not require the acknowledgment or guarantee of acceptance, by any indicated Medi-Cal provider or health facility, of any beneficiary making a certification under this section.

(2) (A) To obtain benefits by enrolling in a prepaid managed health care plan, pilot program, or fee-for-service case management provider that has agreed to make Medi-Cal services readily available to enrolled Medi-Cal beneficiaries.

(B) At the time the beneficiary or eligible applicant selects a prepaid managed health care plan, pilot project, or fee-for-service case management provider, the department shall, when applicable, encourage the beneficiary or eligible applicant to also indicate, in writing, his or her choice of primary care provider contracting with the selected prepaid managed health care plan, pilot project, or fee-for-service case management provider.

(d) (1) In areas specified by the director, a Medi-Cal or AFDC beneficiary or eligible applicant who does not make a choice, or who does not certify that he or she has an established relationship with a primary care provider shall be assigned to and enrolled in an appropriate Medi-Cal managed care plan, pilot project, or fee-for-service case management provider providing service within the area in which the beneficiary resides.

(2) If it is not possible to enroll the beneficiary under a Medi-Cal managed care plan or pilot project or a fee-for-service case management provider because of a lack of capacity or availability of participating contractors, the beneficiary shall be provided with a Medi-Cal card and informed about fee-for-service primary care providers who do all of the following:

(A) The providers agree to accept Medi-Cal patients.

(B) The providers provide information about the provider's willingness to accept Medi-Cal patients as described in Section 14016.6.

(C) The providers provide services within the area in which the beneficiary resides.

(e) If a beneficiary or eligible applicant does not choose a primary care provider or clinic or does not select any primary care provider who is available, the managed health care plan, pilot project, or fee-for-service case management provider that was selected by or assigned to the beneficiary shall ensure that the beneficiary selects a primary care provider or clinic within 30 days after enrollment or is assigned to a primary care provider within 40 days after enrollment.

(f) (1) The managed care plan shall have a valid Medi-Cal contract, adequate capacity, and appropriate staffing to provide health care services to the beneficiary.

(2) The department shall establish standards for all of the following:

(A) The maximum distances a beneficiary is required to travel to obtain primary care services from the managed care plan, fee-for-service managed care provider, or pilot project in which the beneficiary is enrolled.

(B) The conditions under which a primary care service site shall be accessible by public transportation.

(C) The conditions under which a managed care plan, fee-for-service managed care provider, or pilot project shall provide nonmedical transportation to a primary care service site.

(3) In developing the standards required by paragraph (2), the department shall take into account, on a geographic basis, the means of transportation used and distances typically traveled by Medi-Cal beneficiaries to obtain fee-for-service primary care services and the experience of managed care plans in delivering services to Medi-Cal enrollees. The department shall also consider the provider's ability to render culturally and linguistically appropriate services.

(g) To the extent possible, the arrangements for carrying out subdivision (d) shall provide for the equitable distribution of Medi-Cal beneficiaries among participating managed care plans, fee-for-service case management providers, and pilot projects.

(h) If, under the provisions of subdivision (d), a Medi-Cal beneficiary or applicant does not make a choice or does not certify that he or she has an established relationship with a primary care provider, the person may, at the option of the department, be provided with a Medi-Cal card or be assigned to and enrolled in a managed care plan providing service within the area in which the beneficiary resides.

(i) Any Medi-Cal or AFDC beneficiary who is dissatisfied with the provider or managed care plan, pilot project, or fee-for-service case management provider shall be allowed to select or be assigned to another provider or managed care plan, pilot project, or fee-for-service case management provider.

(j) The department or its contractor shall notify a managed care plan, pilot project, or fee-for-service case management provider when it has been selected by or assigned to a beneficiary. The managed care plan, pilot project, or fee-for-service case management provider that has been selected by, or assigned to, a beneficiary, shall notify the primary care provider or clinic than it has been selected or assigned. The managed care plan, pilot project, or fee-for-service case management provider shall also notify the beneficiary of the managed care plan, pilot project, or fee-for-service case management provider or clinic selected or assigned.

(k) (1) The department shall ensure that Medi-Cal beneficiaries eligible under Title XVI of the Social Security Act are provided with information about options available regarding methods of receiving Medi-Cal benefits as described in subdivision (c).

(2) (A) The director may waive the requirements of subdivisions (c) and (d) until a means is established to directly provide the presentation described in subdivision (a) to beneficiaries who are eligible for the federal Supplemental Security Income for the Aged, Blind, and Disabled Program (Subchapter 16 (commencing with Section 1381) of Chapter 7 of Title 42 of the United States Code).

(B) The director may elect not to apply the requirements of subdivisions (c) and (d) to beneficiaries whose eligibility under the Supplemental Security Income program is established before January 1, 1994.

(*l*) In areas where there is no prepaid managed health care plan or pilot program which has contracted with the department to provide services to Medi-Cal beneficiaries, and where no other enrollment requirements have been established by the department, no explicit choice need be made, and the beneficiary or eligible applicant shall receive a Medi-Cal card.

(m) The following definitions contained in this subdivision shall control the construction of this section, unless the context requires otherwise:

(1) "Applicant," "beneficiary," and "eligible applicant," in the case of a family group, means any person with legal authority to make a choice on behalf of dependent family members.

(2) "Fee-for-service case management provider" means a provider enrolled and certified to participate in the Medi-Cal fee-for-service case management program the department may elect to develop in selected areas of the state with the assistance of and in cooperation with California physician providers and other interested provider groups.

(3) "Managed health care plan" and "managed care plan" mean a person or entity operating under a Medi-Cal contract with the department under this chapter or Chapter 8 (commencing with Section 14200) to provide, or arrange for, health care services for Medi-Cal beneficiaries as an alternative to the Medi-Cal fee-for-service program that has a contractual responsibility to

manage health care provided to Medi-Cal beneficiaries covered by the contract.

(n) (1) Whenever a county welfare department notifies a public assistance recipient or Medi-Cal beneficiary that the recipient or beneficiary is losing Medi-Cal eligibility, the county shall include, in the notice to the recipient or beneficiary, notification that the loss of eligibility shall also result in the recipient's or beneficiary's disenrollment from Medi-Cal managed care health or dental plans, if enrolled.

(2) (A) Whenever the department or the county welfare department processes a change in a public assistance recipient's or Medi-Cal beneficiary's residence or aid code that will result in the recipient's or beneficiary's disenrollment from the managed care health or dental plan in which they are currently enrolled, a written notice shall be given to the recipient or beneficiary.

(B) This paragraph shall become operative and the department shall commence sending the notices required under this paragraph on or before the expiration of 12 months after the effective date of this section.

(o) This section shall be implemented in a manner consistent with any federal waiver required to be obtained by the department in order to implement this section.

SEC. 78. Section 14016.55 is added to the Welfare and Institutions Code, to read:

14016.55. (a) It is the intent of the Legislature that Medi-Cal beneficiaries who are required to enroll in a Medi-Cal managed care health plan make an informed choice that is not the result of confusion, lack of information, or understanding of the choices available to them.

(b) It is the intent of the Legislature that the department strive to increase the level of choice of Medi-Cal beneficiaries required to enroll in a Medi-Cal managed care health plan and that default rates be no greater than 20 percent in any participating county.

(c) In any county in which conversion to managed care plan enrollment has taken place and where the default rate, as defined in subdivision (e), is 20 percent or higher in two consecutive months occurring after conversion upon the effective date of this section, the department shall conduct a one-time survey of beneficiaries aimed at determining the reasons why beneficiaries fail to enroll into a managed care plan when required to do so by the department or its health care options contractor.

(d) The department shall submit the results of the survey to the appropriate legislative policy and budget committees within six months of completion, and implement a plan of correction intended to reduce the rate of beneficiary default. The plan of correction may include, but not be limited to, culturally appropriate outreach and education activities, including the use of community based organization.

(e) For purposes of this section, "default rate" refers to the rate of Medi-Cal beneficiaries defaulting into managed care health plan enrollment by virtue of their failure to make an election, as provided for in Section 14016.5.

SEC. 79. Section 14067 of the Welfare and Institutions Code is amended to read:

14067. (a) The department, in conjunction with the Managed Risk Medical Insurance Board, shall develop and conduct a community outreach and education campaign to help families learn about, and apply for, Medi-Cal and the Healthy Families Program of the Managed Risk Medical Insurance Board, subject to the requirements of federal law. In conducting this campaign, the department may seek input from, and contract with, various entities and programs that serve children, including, but not limited to, the State Department of Education, counties, Women, Infants, and Children program agencies, Head Start and Healthy Start programs, and community-based organizations that deal with potentially eligible families and children to assist in the outreach, education, and application completion process.

(b) The outreach and education campaign shall be established and implemented as of February 18, 1998. An annual outreach plan shall be submitted to the Legislature by April 1 for each fiscal year. The plan shall address both the Medi-Cal program for children and the Healthy Families Program and, at a minimum, shall include the following:

(1) Specific milestones and objectives to be completed for the upcoming year and their anticipated cost.

(2) A general description of each strategy or method to be used for outreach.

(3) Geographic areas and special populations to be targeted, if any, and why the special targeting is needed.

(4) Coordination with other state or county education and outreach efforts.

(5) The results of previous year outreach efforts.

(c) In implementing this section, the department may amend any existing or future media outreach campaign contract that it has entered into pursuant to Section 14148.5. Notwithstanding any other provision of law, any such contract entered into, or amended, as required to implement this section, shall be exempt from the approval of the Director of General Services and from the provisions of the Public Contract Code.

(d) The department, in conjunction with the Managed Risk Medical Insurance Board, may conduct pilot outreach and education projects through the allocation of grant funds or through a competitive process, to entities with experience in serving uninsured children, Medi-Cal beneficiaries, or in providing services to low-income families. The purpose of these pilot outreach and education projects will be to encourage the enrollment of children

in the Healthy Families and Medi-Cal programs in underserved areas, or areas which may require special, focused outreach efforts such as rural areas, areas with cultural and linguistic diversity, or areas that have low enrollment levels.

SEC. 80. Section 14093.88 is added to the Welfare and Institutions Code, to read:

14093.88. (a) There is hereby established in the State Treasury the Local Initiative Traditional Provider Loan Assistance Account, which, notwithstanding Section 13340 of the Government Code, is continuously appropriated to the department for the purposes of this section. The Controller shall deposit in the account any moneys appropriated in the annual Budget Act for this purpose.

(b) Moneys in the account established pursuant to subdivision (a) shall, except for any amount necessary to defray the administrative costs of the department in implementing this section, be used to make a loan to the Los Angeles County Health Care Authority (L.A. Care Health Plan) for the purposes specified in subdivision (c).

(c) (1) The L.A. Care Health Plan shall use moneys received pursuant to subdivision (b) in order to establish a pilot project to provide collateral to guarantee loans to traditional providers who serve large numbers of Medi-Cal recipients and who are under contract with the L.A. Care Health Plan to serve Medi-Cal recipients, in order to improve access by these providers to low-interest financing.

(2) The purpose of the pilot project is to assist traditional providers in their transition to managed care by improving access by these providers to low-interest loans which shall be used to upgrade facilities and operation capabilities to address managed care requirements.

(d) In reviewing the applications for loans to traditional providers, the L.A. Care Health Plan and the participating commercial bank shall consider, among other things, all of the following:

(1) The number of Medi-Cal managed care patients assigned to the provider.

(2) The provider's demonstrated commitment to serving Medi-Cal patients.

(3) The likelihood that the proposed project will result in improved quality of care for Medi-Cal managed care patients or the improved management and survivability of the provider, or both.

(4) The likelihood that the applicant could obtain low-interest loans through other loan programs.

(e) L.A. Care Health Plan shall ensure that each project funded by a loan under the pilot project established pursuant to subdivision (c) is evaluated and that the evaluation process includes the input of consumers, providers, and other health care experts, as appropriate.

(f) The L.A. Care Health Plan shall repay the loan made pursuant to subdivision (b) by January 1, 2002, including interest at the pooled money investment rate. Regardless of whether any providers default

on loans guaranteed under this pilot project, if the L.A. Care Health Plan fails to repay the loan in accordance with this subdivision, the department may offset any amount owed by the plan against any other amount due to the plan from the department.

(g) By January 1, 2001, the L.A. Care Health Plan shall submit to the department an evaluation of the pilot project, which shall include data on how funds were used by the plan and how the provision of loans under this project improved encounter-level data reporting by the plan under its contract with the department. The department shall establish criteria to be used by the plan in determining, pursuant to the evaluation, the success of the pilot project.

(h) This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

SEC. 81. Section 14100.7 of the Welfare and Institutions Code is amended to read:

14100.7. (a) Any Medi-Cal provider of incontinence supplies or medical supplies, or both, shall provide, to the department, a bond, or other security satisfactory to the department, of not less than twenty-five thousand dollars ($25,000), pursuant to regulations adopted by the department.

(b) (1) After three years of continuous operation as a provider of incontinence supplies or medical supplies, or both, a Medi-Cal provider may apply to the department for an exemption from the requirements of subdivision (a).

(2) The department shall adopt regulations establishing conditions for the approval or denial of applications for exemption pursuant to paragraph (1).

(c) For purposes of this section, "incontinence supplies" and "medical supplies" mean items prescribed by a licensed practitioner to meet medical needs of the patient, and which are eligible for reimbursement pursuant to this chapter.

(d) Subdivisions (a), (b), and (c) do not apply to individuals who are licensed pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code.

SEC. 82. Section 14100.8 is added to the Welfare and Institutions Code, to read:

14100.8. (a) For purposes of this section, "provider of home health agency services" means a home health agency that is licensed by the department under Section 1726 of the Health and Safety Code that meets the requirements for the medicaid program under Subpart A (commencing with Sec. 441.10) of Part 441 of Title 42 of the Code of Federal Regulations, as amended, that meets the requirements for the Medicare program under Part 484 (commencing with Sec. 481.1) and Part 489 (commencing with Sec. 489.1) of Title 42 of the Code of Federal Regulations, as amended, and that is enrolled as a provider in the Medi-Cal program. In the event

of inconsistent requirements between the medicaid and Medicare programs, medicaid requirements shall take precedence.

(b) Within 90 days after the effective date of a final federal regulation requiring that a provider of home health agency services must acquire a surety bond in order to participate in the medicaid or Medicare program, each provider of home health agency services shall obtain, and thereafter maintain, a surety bond meeting the requirements of the final federal regulation, as amended, as a condition of participation in the Medi-Cal program.

(c) Any entity that has applied to become a provider of home health agency services less than 90 days prior to the date that the final federal regulation described in subdivision (b) becomes effective shall submit a surety bond within 90 days of the effective date of the regulation.

(d) Failure of a provider of home health agency services to obtain and maintain a surety bond as required in this section shall result in denial or recoupment of Medi-Cal reimbursement for services provided during the period for which a surety bond should have been in effect.

(e) Failure of a provider of home health agency services to obtain and maintain a surety bond as required in this section shall result in automatic termination of the provider's participation in the Medi-Cal program.

SEC. 83. Section 14100.9 is added to the Welfare and Institutions Code, to read:

14100.9. (a) For purposes of this section, "provider of durable medical equipment" means any person or entity that furnishes medical equipment and medical supplies, meets state and local laws applicable to the furnishing of medical equipment and medical supplies, and that is enrolled as a provider in the Medi-Cal program.

(b) Within 90 days after the effective date of a final federal regulation requiring that a provider of durable medical equipment must acquire a surety bond in order to participate in the medicaid or Medicare program, each provider of durable medical equipment shall obtain, and thereafter maintain, a surety bond meeting the requirements of the final federal regulation, as amended, as a condition of participation in the Medi-Cal program.

(c) Any person or entity that has applied to become a provider of durable medical equipment less than 90 days prior to the date that the final federal regulation described in subdivision (b) becomes effective shall submit a surety bond within 90 days of the effective date of the regulation.

(d) Failure of a provider of durable medical equipment to obtain and maintain a surety bond as required in this section shall result in denial or recoupment of Medi-Cal reimbursement for services provided during the period for which a surety bond should have been in effect.

(e) Failure of a provider of durable medical equipment to obtain and maintain a surety bond as required in this section shall result in automatic termination of the provider's participation in the Medi-Cal program.

(f) Subdivisions (a), (b), (c), (d), and (e) do not apply to individuals who are licensed pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code.

SEC. 84. Section 14105.31 of the Welfare and Institutions Code is amended to read:

14105.31. For purposes of the Medi-Cal contract drug list, the following definitions shall apply:

(a) "Single-source drug" means a drug that is produced and distributed under an original New Drug Application approved by the federal Food and Drug Administration. This shall include a drug marketed by the innovator manufacturer and any cross-licensed producers or distributors operating under the New Drug Application, and shall also include a biological product, except for vaccines, marketed by the innovator manufacturer and any cross-licensed producers or distributors licensed by the federal Food and Drug Administration pursuant to Section 262 of Title 42 of the United States Code. A drug ceases to be a single-source drug when the same drug in the same dosage form and strength manufactured by another manufacturer is approved by the federal Food and Drug Administration under the provisions for an Abbreviated New Drug Application.

(b) "Best price" means the negotiated price, or the manufacturer's lowest price available to any class of trade organization or entity, including, but not limited to, wholesalers, retailers, hospitals, repackagers, providers, or governmental entities within the United States, that contracts with a manufacturer for a specified price for drugs, inclusive of cash discounts, free goods, volume discounts, rebates, and on- or off-invoice discounts or credits, shall be based upon the manufacturer's commonly used retail package sizes for the drug sold by wholesalers to retail pharmacies.

(c) "Equalization payment amount" means the amount negotiated between the manufacturer and the department for reimbursement by the manufacturer, as specified in the contract. The equalization payment amount shall be based on the difference between the manufacturer's direct catalog price charged to wholesalers and the manufacturer's best price, as defined in subdivision (b).

(d) "Manufacturer" means any person, partnership, corporation, or other institution or entity that is engaged in the production, preparation, propagation, compounding, conversion, or processing of drugs, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, or in the

packaging, repackaging, labeling, relabeling, and distribution of drugs.

(e) "Price escalator" means a mutually agreed upon price specified in the contract, to cover anticipated cost increases over the life of the contract.

(f) "Medi-Cal pharmacy costs" or "Medi-Cal drug costs" means all reimbursements to pharmacy providers for services or merchandise, including single-source or multiple-source prescription drugs, over-the-counter medications, and medical supplies, or any other costs billed by pharmacy providers under the Medi-Cal program.

(g) "Medicaid rebate" means the rebate payment made by drug manufacturers pursuant to Section 1927 of the federal Social Security Act (42 U.S.C. Sec. 1396r-8).

(h) "State rebate" means any negotiated rebate under the Drug Discount Program in addition to the medicaid rebate.

(i) "Date of mailing" means the date that is evidenced by the postmark date by the United States Postal Service or other common mail carrier on the envelope.

(j) This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

SEC. 85. Section 14105.33 of the Welfare and Institutions Code is amended to read:

14105.33. (a) The department may enter into contracts with manufacturers of single-source and multiple-source drugs, on a bid or nonbid basis, for drugs from each major therapeutic category, and shall maintain a list of those drugs for which contracts have been executed.

(b) (1) Contracts executed pursuant to this section shall be for the manufacturer's best price, as defined in Section 14105.31, which shall be specified in the contract, and subject to agreed upon price escalators, as defined in that section. The contracts shall provide for an equalization payment amount, as defined in Section 14105.31, to be remitted to the department quarterly. The department shall submit an invoice to each manufacturer for the equalization payment amount, including supporting utilization data from the department's prescription drug paid claims tapes within 30 days of receipt of the Health Care Financing Administration's file of manufacturer rebate information. In lieu of paying the entire invoiced amount, a manufacturer may contest the invoiced amount pursuant to procedures established by the federal Health Care Financing Administration's Medicaid Drug Rebate Program Releases or regulations by mailing a notice, that shall set forth its grounds for contesting the invoiced amount, to the department within 38 days of the department's mailing of the state invoice and supporting utilization data. For purposes of state accounting practices only, the contested balance shall not be considered an accounts receivable amount until final resolution of the dispute pursuant to procedures

established by the federal Health Care Financing Administration's Medicaid Drug Rebate Program Releases or regulations that results in a finding of an underpayment by the manufacturer. Manufacturers may request, and the department shall timely provide, at cost, Medi-Cal provider level drug utilization data, and other Medi-Cal utilization data necessary to resolve a contested department-invoiced rebate amount.

(2) The department shall provide for an annual audit of utilization data used to calculate the equalization amount to verify the accuracy of that data. The findings of the audit shall be documented in a written audit report to be made available to manufacturers within 90 days of receipt of the report from the auditor. Any manufacturer may receive a copy of the audit report upon written request. Contracts between the department and manufacturers shall provide for any equalization payment adjustments determined necessary pursuant to an audit.

(3) Utilization data used to determine an equalization payment amount shall exclude data from both of the following:

(A) Health maintenance organizations, as defined in Section 300e(a) of Title 42 of the United States Code, including those organizations that contract under Section 1396b(m) of Title 42 of the United States Code.

(B) Capitated plans that include a prescription drug benefit in the capitated rate, and that have negotiated contracts for rebates or discounts with manufacturers.

(c) In order that Medi-Cal beneficiaries may have access to a comprehensive range of therapeutic agents, the department shall ensure that there is representation on the list of contract drugs in all major therapeutic categories. Except as provided in subdivision (a) of Section 14105.35, the department shall not be required to contract with all manufacturers who negotiate for a contract in a particular category. The department shall ensure that there is sufficient representation of single-source and multiple-source drugs, as appropriate, in each major therapeutic category.

(d) (1) The department shall select the therapeutic categories to be included on the list of contract drugs, and the order in which it seeks contracts for those categories. The department may establish different contracting schedules for single-source and multiple-source drugs within a given therapeutic category.

(2) The department shall make every attempt to complete the initial contracting process for each major therapeutic category by January 1, 1999.

(e) (1) In order to fully implement subdivision (d), the department shall, to the extent necessary, negotiate or renegotiate contracts to ensure there are as many single-source drugs within each therapeutic category or subcategory as the department determines necessary to meet the health needs of the Medi-Cal population. The department may determine in selected therapeutic categories or

subcategories that no single-source drugs are necessary because there are currently sufficient multiple-source drugs in the therapeutic category or subcategory on the list of contract drugs to meet the health needs of the Medi-Cal population. However, in no event shall a beneficiary be denied continued use of a drug which is part of a prescribed therapy in effect as of September 2, 1992, until the prescribed therapy is no longer prescribed.

(2) In the development of decisions by the department on the required number of single-source drugs in a therapeutic category or subcategory, and the relative therapeutic merits of each drug in a therapeutic category or subcategory, the department shall consult with the Medi-Cal Contract Drug Advisory Committee. The committee members shall communicate their comments and recommendations to the department within 30 business days of a request for consultation, and shall disclose any associations with pharmaceutical manufacturers or any remuneration from pharmaceutical manufacturers.

(3) In order to expedite implementation of paragraph (1), the requirements of Sections 14105.37, 14105.38, subdivisions (a), (c), (e), and (f) of Sections 14105.39, 14105.4, and 14105.405 are waived for the purposes of this section until January 1, 1994.

(f) In order to achieve maximum cost savings, the Legislature declares that an expedited process for contracts under this section is necessary. Therefore, contracts entered into on a nonbid basis shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(g) In no event shall a beneficiary be denied continued use of a drug that is part of a prescribed therapy in effect as of September 2, 1992, until the prescribed therapy is no longer prescribed.

(h) Contracts executed pursuant to this section shall be confidential and shall be exempt from disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(i) The department shall provide individual notice to Medi-Cal beneficiaries at least 60 calendar days prior to the effective date of the deletion or suspension of any drug from the list of contract drugs. The notice shall include a description of the beneficiary's right to a fair hearing and shall encourage the beneficiary to consult a physician to determine if an appropriate substitute medication is available from Medi-Cal.

(j) In carrying out the provisions of this section, the department may contract either directly, or through the fiscal intermediary, for pharmacy consultant staff necessary to initially accomplish the treatment authorization request reviews.

(k) (1) Manufacturers shall calculate and pay interest on late or unpaid rebates. The interest shall not apply to any prior period adjustments of unit rebate amounts or department utilization adjustments.

(2) For state rebate payments, manufacturers shall calculate and pay interest on late or unpaid rebates for quarters that begin on or after the effective date of the act that added this subdivision.

(3) Following final resolution of any dispute pursuant to procedures established by the federal Health Care Financing Administration's Medicaid Drug Rebate Program Releases or regulations regarding the amount of a rebate, any underpayment by a manufacturer shall be paid with interest calculated pursuant to subdivisions (m) and (n), and any overpayment, together with interest at the rate calculated pursuant to subdivisions (m) and (n), shall be credited by the department against future rebates due.

(*l*) Interest pursuant to subdivision (k) shall begin accruing 38 calendar days from the date of mailing of the invoice, including supporting utilization data sent to the manufacturer. Interest shall continue to accrue until the date of mailing of the manufacturer's payment.

(m) Except as specified in subdivision (n), interest rates and calculations pursuant to subdivision (k) for medicaid rebates and state rebates shall be identical and shall be determined by the federal Health Care Financing Administration's Medicaid Drug Rebate Program Releases or regulations.

(n) If the date of mailing of a state rebate payment is 69 days or more from the date of mailing of the invoice, including supporting utilization data sent to the manufacturer, the interest rate and calculations pursuant to subdivision (k) shall be as specified in subdivision (m), however the interest rate shall be increased by 10 percentage points. This subdivision shall apply to payments for amounts invoiced for any quarters that begin on or after the effective date of the act that added this subdivision.

(o) If the rebate payment is not received, the department shall send overdue notices to the manufacturer at 38, 68, and 98 days after the date of mailing of the invoice, and supporting utilization data. If the department has not received a rebate payment, including interest, within 180 days of the date of mailing of the invoice, including supporting utilization data, the manufacturer's contract with the department shall be deemed to be in default and the contract may be terminated in accordance with the terms of the contract. For all other manufacturers, if the department has not received a rebate payment, including interest, within 180 days of the date of mailing of the invoice, including supporting utilization data, all of the drug products of those manufacturers shall be made available only through prior authorization effective 270 days after the date of mailing of the invoice, including utilization data sent to manufacturers.

(p) If the manufacturer provides payment or evidence of payment to the department at least 40 days prior to the proposed date the drug is to be made available only through prior authorization pursuant to subdivision (o), the department shall terminate its

actions to place the manufacturers' drug products on prior authorization.

(q) The department shall direct the state's fiscal intermediary to remove prior authorization requirements imposed pursuant to subdivision (o) and notify providers within 60 days after payment by the manufacturer of the rebate, including interest. If a contract was in place at the time the manufacturers' drugs were placed on prior authorization, removal of prior authorization requirements shall be contingent upon good faith negotiations and a signed contract with the department.

(r) A beneficiary may obtain drugs placed on prior authorization pursuant to subdivision (o) if the beneficiary qualifies for continuing care status. To be eligible for continuing care status, a beneficiary must be taking the drug when its manufacturer is placed on prior authorization status. Additionally, the department shall have received a claim for the drug with a date of service that is within 100 days prior to the date the manufacturer was placed on prior authorization.

(s) A beneficiary may remain eligible for continuing care status, provided that a claim is submitted for the drug in question at least every 100 days and the date of service of the claim is within 100 days of the date of service of the last claim submitted for the same drug.

(t) Drugs covered pursuant to Sections 14105.43 and 14133.2 shall not be subject to prior authorization pursuant to subdivision (o), and any other drug may be exempted from prior authorization by the department if the director determines that an essential need exists for that drug, and there are no other drugs currently available without prior authorization that meet that need.

(u) It is the intent of the Legislature in enacting subdivisions (k) to (t), inclusive, that the department and manufacturers shall cooperate and make every effort to resolve rebate payment disputes within 90 days of notification by the manufacturer to the department of a dispute in the calculation of rebate payments.

(v) This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

SEC. 86. Section 14105.35 of the Welfare and Institutions Code is amended to read:

14105.35. (a) (1) On and after July 1, 1990, drugs included on the Medi-Cal drug formulary shall be included on the list of contract drugs until the department and the manufacturer have concluded contract negotiations or the department suspends the drug from the list of contract drugs pursuant to the provisions of this subdivision.

The department shall, in writing, invite any manufacturer with single-source drug products on the formulary as of July 1, 1990, to enter into negotiations relative to the retention of its drug or drugs. As to the issue of cost, the department shall accept the manufacturer's

best price as sufficient for purposes of entering into a contract to retain the drug or drugs on the list of contract drugs.

If the department and a manufacturer enter into a contract for retention of a drug or drugs on the list of contract drugs, the drug or drugs shall be retained on the list of contract drugs for the effective term of the contract.

If a manufacturer refuses to enter into negotiations with the department pursuant to this subdivision, or if after 30 days of negotiation, the manufacturer has not agreed to execute a contract for a drug at the manufacturer's best price, the department may suspend from the list of contract drugs the manufacturer's single-source drug in question for a period of at least 180 days. The department shall lift the suspension upon execution of a contract for that drug. Consistent with the provisions of this section, the department shall delete the Medi-Cal drug formulary specified in paragraphs (b), (c), (d), and (e) of Section 59999 of Title 22 of the California Code of Regulations.

(2) On and after July 1, 1990, the director may retain a drug on the Medi-Cal list of contract drugs even if no contract is executed with a manufacturer, if the director determines that an essential need exists for that drug, and there are no other drugs currently on the formulary that meet that need.

(3) The director may delete a drug from the list of contract drugs if the director determines that the drug presents problems of safety or misuse. The director's decision as to safety shall be based upon published medical literature, and the director's decision as to misuse shall be based on published medical literature and claims data supplied by the fiscal intermediary.

(b) Any reference to the Medi-Cal drug formulary by statute or regulation shall be construed as referring to the list of contract drugs.

(c) (1) Any drug in the process of being added to the formulary by contract agreement pursuant to Section 14105.3, executed prior to the effective date of this section, shall be added to the list of contract drugs.

(2) Contracts pursuant to Section 14105.3 executed prior to January 1, 1991, shall be considered to be contracts executed pursuant to Section 14105.33, and the department shall exempt the drugs included in these contracts from the initial therapeutic category review in which they would normally be considered.

(3) Nothing in this section shall be construed to require the department to discontinue negotiations into which it has entered with any manufacturer as of the effective date of this section. Contracts entered into as a result of these negotiations shall be exempt from the initial therapeutic category review in which they would normally be considered.

(d) This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

SEC. 87. Section 14105.37 of the Welfare and Institutions Code is amended to read:

14105.37. (a) The department shall notify each manufacturer of drugs in therapeutic categories selected pursuant to Section 14105.33 of the provisions of Sections 14105.31 to 14105.42, inclusive.

(b) If, within 45 days of notification, a manufacturer does not enter into negotiations for a contract pursuant to those sections, the department may suspend or delete from the list of contract drugs, or refuse to consider for addition, drugs of that manufacturer in the selected therapeutic categories.

(c) If, after 150 days from the initial notification, a contract is not executed for a drug currently on the list of contract drugs, the department may suspend or delete the drug from the list of contract drugs.

(d) If, within 150 days from the initial notification, a contract is executed for a drug currently on the list of contract drugs, the department shall retain the drug on the list of contract drugs.

(e) If, within 150 days from the date of the initial notification, a contract is executed for a drug not currently on the list of contract drugs, the department shall add the drug to the list of contract drugs.

(f) The department shall terminate all negotiations 150 days after the initial notification.

(g) The department may suspend or delete any drug from the list of contract drugs at the expiration of the contract term or when the contract between the department and the manufacturer of that drug is terminated.

(h) Any drug suspended from the list of contract drugs pursuant to this section or Section 14105.35 shall be subject to prior authorization, as if that drug were not on the list of contract drugs.

(i) Any drug suspended from the list of contract drugs pursuant to this section or Section 14105.35 for at least 12 months may be deleted from the list of contract drugs in accordance with the provisions of Section 14105.38.

(j) This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

SEC. 88. Section 14105.38 of the Welfare and Institutions Code is amended to read:

14105.38. (a) (1) In the event the department determines a drug should be deleted from the list of contract drugs, the department shall conduct a public hearing, as provided in this section, to receive comment on the impact of removing the drug.

(2) (A) The department shall provide written notice 30 days prior to the hearing.

(B) The department shall send the notice required by this subdivision to the manufacturer of the drug proposed to be deleted and to organizations representing Medi-Cal beneficiaries.

(b) (1) The hearing panel shall consist of the Chief, Medi-Cal Drug Discount Program, who shall serve as chair, and the Medi-Cal Contract Drug Advisory Committee.

(2) The hearing shall be recorded and transcribed, and the transcript available for public review.

(3) Subsequent to hearing all public comment, and within 30 days of the hearing, each panel member shall submit a recommendation regarding deletion of the drug and the reason for the recommendation to the director.

(c) The director shall consider public comments provided at the hearing and the recommendations of each panel member in determining whether to delete the drug.

(d) This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

SEC. 89. Section 14105.39 of the Welfare and Institutions Code is amended to read:

14105.39. (a) (1) A manufacturer of a new single-source drug may request inclusion of its drug on the list of contract drugs pursuant to Section 14105.33 provided all of the following conditions are met:

(A) The request is made within 12 months of approval for marketing by the federal Food and Drug Administration.

(B) The manufacturer agrees to negotiate a contract with the department to provide the drug at the manufacturer's best price.

(C) (i) The manufacturer provides the department with necessary information, as specified by the department, in the request.

(ii) Notwithstanding clause (i), either of the following may be submitted by the manufacturer in lieu of the Summary Basis of Approval prepared by the federal Food and Drug Administration for that drug:

(I) The federal Food and Drug Administration's approval or approvable letter for the drug and federal Food and Drug Administration's approved labeling.

(II) The federal Food and Drug Administration's medical officers' and pharmacologists' reviews and the federal Food and Drug Administration's approved labeling.

(D) The department had concluded contracting for the therapeutic category in which the drug is included prior to approval of the drug by the federal Food and Drug Administration.

(2) Within 90 days from receipt of the request, the department shall evaluate the request using the criteria identified in subdivision (d), and shall submit the drug to the Medi-Cal Contract Drug Advisory Committee.

(b) Any petition for the addition to or deletion of a drug to the Medi-Cal drug formulary submitted prior to July 31, 1990, shall be deemed to be denied. A manufacturer who has submitted a petition

deemed denied may request inclusion of that drug on the list of contract drugs provided all of the following conditions are met:

(1) The manufacturer agrees to negotiate for a contract with the department to provide the drug at the manufacturer's best price.

(2) The manufacturer provides the department with necessary information, as specified by the department, in the request.

(3) The manufacturer submits the request to the department prior to October 1, 1990.

(c) Any new drug designated as having an important therapeutic gain and approved for marketing by the federal Food and Drug Administration on or after July 31, 1990, shall immediately be included on the list of contract drugs for a period of three years provided that all of the following conditions are met:

(1) The manufacturer offers the department its best price.

(2) The drug is typically administered in an outpatient setting.

(3) The drug is prescribed only for the indications and usage specified in the federal Food and Drug Administration approved labeling.

(4) The drug is determined by the director to be safe, relative to other drugs in the same therapeutic category on the list of contract drugs.

(d) (1) To ensure that the health needs of Medi-Cal beneficiaries are met consistent with the intent of this chapter, the department shall, when evaluating a decision to execute a contract, and when evaluating drugs for retention on, addition to, or deletion from, the list of contract drugs, use all of the following criteria:

(A) The safety of the drug.

(B) The effectiveness of the drug.

(C) The essential need for the drug.

(D) The potential for misuse of the drug.

(E) The cost of the drug.

(2) The deficiency of a drug when measured by one of these criteria may be sufficient to support a decision that the drug should not be added or retained, or should be deleted from the list. However, the superiority of a drug under one criterion may be sufficient to warrant the addition or retention of the drug, notwithstanding a deficiency in another criterion.

(e) (1) A manufacturer of single-source drugs denied a contract pursuant to this section or Section 14105.33 or 14105.37, may file an appeal of that decision with the director within 30 calendar days of the department's written decision.

(2) Within 30 calendar days of the manufacturer's appeal, the director shall request a recommendation regarding the appeal from the Medi-Cal Contract Drug Advisory Committee. The committee shall provide its recommendation in writing, within 30 calendar days of the director's request.

(3) The director shall issue a final decision on the appeal within 30 calendar days of the recommendation.

(f) Deletions made to the list of contract drugs, including those made pursuant to Section 14105.37, shall become effective no sooner than 30 days after publication of the changes in provider bulletins.

(g) Changes made to the list of contract drugs under this or any other section are exempt from the requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and shall not be subject to the review and approval of the Office of Administrative Law.

(h) This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

SEC. 90. Section 14105.4 of the Welfare and Institutions Code, as amended by Section 35 of Chapter 197 of the Statutes of 1996, is amended to read:

14105.4. (a) The director shall appoint a Medi-Cal Contract Drug Advisory Committee for the purpose of providing scientific and medical analysis on drugs contained on the list of contract drugs. The duties of the committee shall be as follows:

(1) To review drugs in the Medi-Cal list of contract drugs and make written recommendations to the director as to the addition of any drug or the deletion of any drug from the list. These recommendations shall be in accordance with subdivision (d) of Section 14105.39.

(2) To review and report in writing to the director as to the comparative therapeutic effect of drugs in accordance with Section 14053.5.

(3) To prepare a fair, impartial, and independent recommendation in writing, regarding appeals from manufacturers made pursuant to subdivision (e) of Section 14105.39.

(b) The committee shall consist of at least one representative from each of the following groups:

(1) Physicians.

(2) Pharmacists.

(3) Schools of pharmacy or pharmacologists.

(4) Medi-Cal beneficiaries.

(c) Members of the committee shall be reimbursed for necessary travel and other expenses incurred in the performance of official committee duties.

(d) In order to provide sufficient scientific information and analysis in the therapeutic categories under review, the director may replace a representative if required for specific expertise.

(e) The director shall notify the committee of the decisions made on the recommendations.

(f) This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

SEC. 91. Section 14105.4 of the Welfare and Institutions Code, as amended by Section 36 of Chapter 197 of the Statutes of 1996, is amended to read:

14105.4. (a) The department shall schedule and conduct a public regulatory hearing to consider the addition of a drug to, or the deletion of a drug from, the Medi-Cal drug formulary five working days subsequent to the Medical Therapeutic and Drug Advisory Committee meeting which shall meet at least every four months. The public hearing may consist of written testimony only, and the hearing record shall be closed at the end of the public hearing.

(b) The department shall make available 45 days prior to the public hearing the department's estimate of any anticipated costs or savings to the state from adding a drug product to, or deleting a drug product from, the Medi-Cal drug formulary.

(c) Whenever the department accepts a completed petition to add a drug product to the Medi-Cal drug formulary and it is not processed pursuant to Section 14105.9, it shall be scheduled for review at the next regularly scheduled Medical Therapeutic and Drug Advisory Committee meeting and public regulatory hearing, unless the meeting and hearing are scheduled to occur within 120 days, in which case the drug product may be scheduled for the following hearing.

(d) The director shall issue a final decision regarding the drug product and shall submit any regulation adding a drug product to, or deleting a drug product from, the Medi-Cal drug formulary to the Office of Administrative Law, along with the completed rulemaking record, within seven months after the hearing prescribed in subdivision (a). This section shall not, however, be construed in a manner which results in the disapproval or invalidation of a regulation for failure to comply with the time frames prescribed in this subdivision and subdivisions (a) and (c).

(e) (1) Except as provided in paragraph (2), the criteria used by the department in deciding whether a drug product shall be added to or deleted from the formulary shall be limited to the criteria adopted as department regulations. The criteria shall be specific and unambiguous.

(2) Notwithstanding paragraph (1), either of the following may be submitted by the manufacturer in lieu of the Summary Basis of Approval prepared by the federal Food and Drug Administration for that drug:

(A) The federal Food and Drug Administration's approval or approvable letter for the drug and federal Food and Drug Administration's approved labeling.

(B) The federal Food and Drug Administration's medical officers' and pharmacologists' reviews and the federal Food and Drug Administration's approved labeling.

(f) Departmental requests for information from persons filing drug petitions to which this section applies shall be specific and

unambiguous and shall be made solely for the purpose of addressing the criteria utilized in accordance with subdivision (e).

(g) All published studies received by the department pursuant to a drug petition prior to the close of the public regulatory hearing record shall be accepted and considered by the department.

(h) Whenever the director decides to reject a petition to add a drug product to, or delete a drug product from, the formulary, the director shall notify the petitioner directly and in writing indicating the reason and specifying the criteria utilized in reaching the decision.

(i) The department shall accept a petition for a drug that has been rejected by the director upon the submission of another complete petition containing substantial new information that addresses the reason or reasons for rejection stated by the director pursuant to subdivision (h). Any petition accepted pursuant to this subdivision shall be processed in accordance with subdivision (c), or Section 14105.9, whichever is applicable.

(j) This section shall become operative on January 1, 2000.

SEC. 92. Section 14105.405 of the Welfare and Institutions Code is amended to read:

14105.405. (a) A Medi-Cal beneficiary, within 90 days of receipt of the director's notice to beneficiaries pursuant to subdivision (g) of Section 14105.33, informing them of the decision to delete or suspend a drug from the list of contract drugs, may request a fair hearing pursuant to Chapter 7 (commencing with Section 10950) of Part 2.

(b) Any beneficiary filing a fair hearing request regarding the deletion or suspension of a drug from the formulary shall be granted a treatment authorization request for that drug until a final decision is adopted by the director. Should the beneficiary seek judicial review of the director's decision, a treatment authorization request shall be granted for that drug until a final decision is issued by the court.

(c) (1) Any Medi-Cal beneficiary, within one year of the director's decision pursuant to Section 10959, may file a petition with the superior court, under the provisions of Section 1094.5 of the Code of Civil Procedure, praying for a review of both the legal and factual basis for the director's decision.

(2) The director shall be the sole respondent in these proceedings.

(d) Any Medi-Cal beneficiary injured as a result of being denied a drug which is determined to be medically necessary may sue for injunctive or declaratory relief to review the director's decision to delete or suspend a drug from the list of contract drugs.

(e) This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

SEC. 93. Section 14105.41 of the Welfare and Institutions Code, as amended by Section 38 of Chapter 197 of the Statutes of 1996, is amended to read:

14105.41. (a) Moneys accruing to the department from contracts executed pursuant to Section 14105.33 shall be deposited in the Health Care Deposit Fund, and shall be subject to appropriation by the Legislature.

(b) This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

SEC. 94. Section 14105.41 of the Welfare and Institutions Code, as amended by Section 39 of Chapter 197 of the Statutes of 1996, is amended to read:

14105.41. (a) For the purpose of adding drugs to, or deleting drugs from, the Medi-Cal drug formulary as described in Section 14105.4, whether pursuant to a petition or by the department independent of a petition, all of the requirements of the Administrative Procedure Act contained in Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall be applicable except that the requirements of subdivision (a) of Section 11340.7 and subdivision (a) of Section 11346.9 of the Government Code shall be deemed to have been complied with if the department does all of the following:

(1) Upon receipt of a petition requesting the addition of a drug to, or the deletion of a drug from, the Medi-Cal drug formulary, the department shall notify the petitioner directly and in writing of the receipt of the petition and shall, within 30 days, either return the petition as incomplete or schedule the petition for public hearing, unless the public hearing is not required pursuant to Section 14105.9.

(2) Notifies each petitioner directly and in writing of its decision regarding the addition of a drug product to, or deletion of a drug product from, the formulary and shall state the reason or reasons for its decision and the specific regulatory criteria that are the basis of the department's decision.

(3) Prepares and submits to the Office of Administrative Law with the adopted regulation all of the following for each drug which the department has decided to add to, or delete from, the Medi-Cal drug formulary:

(A) A brief summary of the comments submitted. For the purpose of this section, "comments" shall mean the major points raised in testimony which specifically address the regulatory criteria upon which the department is authorized, pursuant to subdivision (e) of Section 14105.4, to base a decision to add or delete a drug from the formulary.

(B) The recommendation of the Medical Therapeutic and Drug Advisory Committee.

(C) The decision of the department.

(D) A statement of the reason and the specific regulatory criteria that are the basis of the department's decision.

(b) Any additional information provided to the department during the posting of revisions to the proposed regulation shall be

responded to by the department directly and in writing to the originator. That response shall notify the originator whether the additional information has resulted in a changed decision.

(c) For the purpose of review by the court, if any, and review and approval by the Office of Administrative Law of changes to the Medi-Cal drug formulary adopted by the department, each drug added to, or deleted from, the formulary shall be considered to be a separate regulation and shall be severable from all other additions or deletions of drugs contained in the rulemaking file.

(d) This section shall be applicable to any Medi-Cal drug formulary regulation package filed with the Office of Administrative Law on or after January 1, 2000.

(e) This section shall become operative on January 1, 2000.

SEC. 95. Section 14105.42 of the Welfare and Institutions Code, as amended by Chapter 690 of the Statutes of 1997, is amended to read:

14105.42. (a) The department shall report to the Legislature after the first three major therapeutic categories have been reviewed and contracts executed. The report shall include the estimated savings, number of manufacturers entering negotiations, number of contracts executed, number of drugs added and deleted, and impact on Medi-Cal beneficiaries and providers.

(b) The department shall provide the following data to the Legislature and to the State Auditor by January 1, 1991, and every six months thereafter:

(1) The number of drug treatment authorization requests (TAR) received by facsimile, by secondary answering system and in person for each therapeutic category.

(2) The number of drug TARS requested, approved, denied, and returned.

(3) The length of time between the TAR request and the decision, specified by type of communication such as telephone or facsimile if available.

(4) For denied TARS, the number of fair hearings requested, approved, denied and pending.

(5) The numbers of providers who were unable to submit a request or made multiple attempts because of faulty or unavailable lines of communication, if available.

(6) The numbers of complaints made by beneficiaries and providers relating to difficulty or inability to obtain a TAR response.

(7) The status of the enhancements to the TAR process specified in Section 21 of Chapter 457 of the Statutes of 1990.

(8) The number of calls on the TAR line which are not getting through.

(c) Until January 1, 2000, or the date of the report specified in subdivision (f), whichever is earlier, the State Auditor shall prepare a report by February 1, 1991, and every six months thereafter providing a summary and analysis of the data specified in subdivision (b), and a comparative analysis of changes in the TAR process using

June 1, 1990, as a base. The analysis shall include a measure of increased or decreased ability to contact the department and receive a response in a shorter or greater period of time.

(d) The Bureau of State Audits shall prepare a report by January 1, 1998, on the drug program management techniques of the drug contracting program, and the comparability of the program to other private sector third-party payers. In completing its report the bureau may consult with the department, prescribing physicians, pharmacists, drug manufacturers, representatives of beneficiaries, and others as the bureau sees fit.

(e) The department shall report to the Legislature, through the annual budget process, on the cost-effectiveness of contracts executed pursuant to Section 14105.33.

(f) The Joint Legislative Audit Committee may review and report on the requirements imposed on the State Auditor by subdivision (c) on or before January 1, 2000.

(g) This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

SEC. 96. Section 14105.91 of the Welfare and Institutions Code is amended to read:

14105.91. The department may add a drug to the formulary which is a different dosage form, or strength of a drug product which is listed in the formulary without review by the Medical Therapeutics and Drug Advisory Committee and the addition shall be deemed to comply with the requirements of the California Administrative Procedures Act.

This section shall become operative on January 1, 2000.

SEC. 97. Section 14105.915 of the Welfare and Institutions Code is amended to read:

14105.915. The department may remove any drug from the formulary at the expiration of the contract term or when the contract between the department and the manufacturer of that drug is terminated.

This section shall become operative on January 1, 2000.

SEC. 98. Section 14105.916 of the Welfare and Institutions Code is amended to read:

14105.916. Notwithstanding any other provision of law, on and after January 1, 2000, drugs on the Medi-Cal list of contract drugs shall become the Medi-Cal drug formulary.

SEC. 99. Section 14124.70 of the Welfare and Institutions Code is amended to read:

14124.70. As used in this article:

(a) "Carrier" includes any insurer as defined in Section 23 of the Insurance Code, including any private company, corporation, mutual association, trust fund, reciprocal or interinsurance exchange authorized under the laws of this state to insure persons against liability or injuries caused to another, and also any insurer providing

benefits under a policy of bodily injury liability insurance covering liability arising out of the ownership, maintenance or use of a motor vehicle which provides uninsured motorist endorsement or coverage, pursuant to Section 11580.2 of the Insurance Code.

(b) "Beneficiary" means any person who has received benefits or will be provided benefits under this chapter because of an injury for which another person or party may be liable. It includes such beneficiary's guardian, conservator or other personal representative, his estate or survivors.

(c) "Reasonable value of benefits" means both of the following:

(1) Except in a case in which services were provided to a beneficiary under a managed care arrangement or contract, "reasonable value of benefits" means the Medi-Cal rate of payment, for the type of services rendered, under the schedule of maximum allowances authorized by Section 14106 or, the Medi-Cal rate of payment, for the type of services rendered, under regulations adopted pursuant to this chapter, including but not limited, to Section 14105.

(2) If services were provided to a beneficiary under a managed care arrangement or contract, "reasonable value of benefits" means the rate of payment to the provider by the plan for the services rendered to the beneficiary, except in cases where the plan pays the provider on a capitated or risk sharing basis, in which case it means the value of the services rendered to the beneficiary calculated by the plan as the usual customary and reasonable charge made to the general public by the provider for similar services.

SEC. 100. Section 14124.72 of the Welfare and Institutions Code is amended to read:

14124.72. (a) Where an action is brought by the director pursuant to Section 14124.71, it shall be commenced within the period prescribed in Section 338 of the Code of Civil Procedure.

(b) The death of the beneficiary does not abate any right of action established by Section 14124.71.

(c) When an action or claim is brought by persons entitled to bring such actions or assert such claims against a third party who may be liable for causing the death of a beneficiary, any settlement, judgment or award obtained is subject to the director's right to recover from that party the reasonable value of the benefits provided to the beneficiary under the Medi-Cal program, as provided in subdivision (d).

(d) Where the action or claim is brought by the beneficiary alone and the beneficiary incurs a personal liability to pay attorney's fees and costs of litigation, the director's claim for reimbursement of the benefits provided to the beneficiary shall be limited to the reasonable value of benefits provided to the beneficiary under the Medi-Cal program less 25 percent which represents the director's reasonable share of attorney's fees paid by the beneficiary and that portion of the cost of litigation expenses determined by multiplying by the ratio of

the full amount of the reasonable value of benefits so provided to the full amount of the judgment, award, or settlement.

SEC. 101. Section 14124.74 of the Welfare and Institutions Code is amended to read:

14124.74. In the event of judgment or award in a suit or claim against a third party or carrier:

(a) If the action or claim is prosecuted by the beneficiary alone, the court or agency shall first order paid from any judgment or award the reasonable litigation expenses incurred in preparation and prosecution of the action or claim, together with reasonable attorney's fees, when an attorney has been retained. After payment of these expenses and attorney's fees the court or agency shall, on the application of the director, allow as a first lien against the amount of the settlement, judgment, or award the reasonable value of additional benefits provided to the beneficiary under the Medi-Cal program, as provided in subdivision (d) of Section 14124.72, and as a second lien, the amount of any claims, pursuant to Section 14019.3, owed to a provider, as provided in Section 14124.791.

(b) If the action or claim is prosecuted both by the beneficiary and the director, the court or agency shall first order paid from any judgment or award, the reasonable litigation expenses incurred in preparation and prosecution of the action or claim, together with reasonable attorney's fees based solely on the services rendered for the benefit of the beneficiary. After payment of these expenses and attorney's fees, the court or agency shall first apply out of the balance of the judgment or award an amount sufficient to reimburse the director the full amount of the reasonable value of benefits provided on behalf of the beneficiary under the Medi-Cal program, and then an amount sufficient to reimburse a provider who has filed a lien for any claims for services rendered to the beneficiary, as provided under Section 14124.791.

SEC. 102. Section 14124.75 of the Welfare and Institutions Code is amended to read:

14124.75. The court or agency shall, upon further application at any time before the judgment or award is satisfied, allow as a further lien the reasonable value of additional benefits provided arising out of the same cause of action or claim provided on behalf of the beneficiary under the Medi-Cal Program, where such benefits were provided or became payable subsequent to the original order.

SEC. 103. Section 14124.78 of the Welfare and Institutions Code is amended to read:

14124.78. Except as otherwise provided in this article, notwithstanding any other provision of law, the entire amount of any settlement of the injured beneficiary's action or claim, with or without suit, is subject to the director's claim for reimbursement of the reasonable value of benefits provided and any lien filed pursuant thereto, but in no event shall the director's claim exceed one-half of the beneficiary's recovery after deducting for attorney's fees,

litigation costs, and medical expenses relating to the injury paid for by the beneficiary.

SEC. 104. Section 14132.44 of the Welfare and Institutions Code is amended to read:

14132.44. (a) Targeted case management (TCM), pursuant to Section 1915(g) of the Social Security Act as amended by Public Law 99-272 (42 U.S.C. Sec. 1396n(g)), shall be covered as a benefit, effective January 1, 1995. Nothing in this section shall be construed to require any local governmental agency to implement TCM.

(b) A TCM provider furnishing TCM services shall be a local governmental agency under contract with the department to provide TCM services. Local educational agencies shall not be providers of case management services under this section.

(c) A TCM provider may contract with a nongovernmental entity or the University of California, or both, to provide TCM services on its behalf under the conditions specified by the department in regulations.

(d) Each TCM provider shall have all of the following:

(1) Established procedures for performance monitoring.

(2) A countywide system to prevent duplication of services and to ensure coordination and continuity of care among providers of case management services provided to beneficiaries who are eligible to receive case management services from two or more programs.

(3) A fee mechanism effective January 1, 1995, specific to TCM services provided, which may vary by program.

(e) A TCM service provider, a nongovernmental entity or the University of California, or both, under contract with a TCM provider may provide TCM services to one or all of the following groups of Medi-Cal beneficiaries, which shall be defined in regulation:

(1) High-risk persons.

(2) Persons who have language or other comprehension barriers.

(3) Persons on probation.

(4) Persons who have exhibited an inability to handle personal, medical, or other affairs.

(5) Persons abusing alcohol or drugs, or both.

(6) Adults at risk of institutionalization.

(7) Adults at risk of abuse or neglect.

(f) (1) A local governmental agency that elects to provide TCM services to the groups specified in subdivision (e) shall, for each fiscal year, for the purpose of obtaining federal medicaid matching funds, submit an annual cost report as prescribed by the department that certifies all of the following:

(A) The availability and expenditure of 100 percent of the nonfederal share for the provision of TCM services from the local governmental agency's general fund or from any other funds allowed under federal law and regulation.

(B) The amount of funds expended on allowable TCM services.

(C) Its expenditures represent costs that are eligible for federal financial participation.

(D) The costs reflected in the annual cost reports used to determine TCM rates are developed in compliance with the definitions contained in the Office of Management and Budget (OMB) Circular A-87.

(E) Case management services provided in accordance with Section 1396n(g) of Title 42 of the United States Code will not duplicate case management services provided under any home- and community-based services waiver.

(F) Claims for providing case management services pursuant to this section will not duplicate claims made to public agencies or private entities under other program authorities for the same purposes.

(G) The requirements of subdivision (d) have been met.

(2) The department shall deny any claim if it determines that any certification required by this subdivision is not adequately supported for purposes of federal financial participation.

(g) Only a local governmental agency may submit TCM service claims to the department for the performance of TCM services.

(h) During the period from January 1, 1995, through June 30, 1995, TCM services shall be reimbursed according to the interim mechanism developed by the state and the Health Care Financing Administration, which is reflected in the document entitled "Agreement Between the Health Care Financing Administration and the State of California, Department of Health Services." For the 1995–96 fiscal year, the department shall establish an initial rate of reimbursement. Effective July 1, 1996, and thereafter, TCM services shall be reimbursed in accordance with regulations that shall be adopted by the department.

(i) The department, in consultation with local governmental agencies, and consistent with federal regulations, and the State Medicaid Manual of the Department of Health and Human Services, Health Care Financing Administration, shall adopt regulations that define TCM services, establish the standards under which TCM services qualify as a Medi-Cal reimbursable service, prescribe the methodology for determining the rate of reimbursement, and establish a claims submission and processing system and method to certify local matching expenditures.

(j) (1) Notwithstanding any other provision of this section, the state shall be held harmless, in accordance with paragraphs (2) and (3) from any federal audit disallowance and interest resulting from payments made by the federal medicaid program as reimbursement for claims for providing TCM services pursuant to this section, less the amounts already remitted to the state pursuant to subdivision (m) for the disallowed claim.

(2) To the extent that a federal audit disallowance and interest results from a claim or claims for which any local governmental

agency has received reimbursement for TCM services, the department shall recoup from the local governmental agency that submitted that disallowed claim, through offsets or by a direct billing, amounts equal to the amount of the disallowance and interest, in that fiscal year, less the amounts already remitted to the state pursuant to subdivision (m) for the disallowed claim. All subsequent claims submitted to the department applicable to any previously disallowed claim, may be held in abeyance, with no payment made, until the federal disallowance issue is resolved.

(3) Notwithstanding paragraphs (1) and (2), to the extent that a federal audit disallowance and interest results from a claim or claims for which the local governmental agency has received reimbursement for TCM services performed by a nongovernmental entity or the University of California, or both, under contract with, and on behalf of, the participating local governmental agency, the department shall be held harmless by that particular local governmental agency for 100 percent of the amount of any such federal audit disallowance and interest, less the amounts already remitted to the state pursuant to subdivision (m) for the disallowed claim.

(k) The use of local matching funds required by this section shall not create, lead to, or expand the health care funding obligations or service obligations for current or future years for each local governmental agency, except as required by this section or as may be required by federal law.

(*l*) TCM services are services which assist beneficiaries to gain access to needed medical, social, educational, and other services. Services provided by TCM providers, and their subcontractors, shall be defined in regulation, and shall include at least one of the following:

(1) Assessment.
(2) Plan development.
(3) Linkage and consultation.
(4) Assistance in accessing services.
(5) Periodic review.
(6) Crisis assistance planning.

(m) (1) Each local government agency shall contribute to the department a portion of the agency's general fund that has been made available due to the coverage of services described in this section under the Medi-Cal program. The contributed funds shall be reinvested in health services through the Medi-Cal program. The total contribution amount shall be equal to $33^1/_3$ percent of the amounts that have been made available under this section, but in no case shall this contribution exceed twenty million dollars ($20,000,000) in a fiscal year less the amount contributed pursuant to subdivision (m) of Section 14132.47. Beginning with the 1994–95 fiscal year, each local governmental agency's share of the total contribution shall be determined by claims submitted and approved

for payment through January 1 of the following calendar year. Claims received and approved for payment after January 1 for dates of service in the previous fiscal year shall be included in the following year's calculation. Each local governmental agency's share of the contribution for the previous fiscal year shall be determined no later than February 15 and shall be remitted to the state no later than April 1 of each year. The contribution amount shall be paid from nonfederal, general fund revenues, and shall be deposited in the Targeted Case Management Claiming Fund, which is hereby created, for transfer to the Health Care Deposit Fund.

(2) Moneys received by the department pursuant to this subdivision are hereby continuously appropriated, notwithstanding Section 13340 of the Government Code, to the department for the support of the Medi-Cal program, and the funds shall be administered in accordance with procedures prescribed by the Department of Finance. If not paid as provided in this section, the department may offset payments due to each local governmental agency from the state, not related to payments required to be made pursuant to this section, in order to recoup these funds for the Targeted Case Management Claiming Fund.

(3) This subdivision shall only apply to claims approved for the 1994–95 to 1997–98 fiscal years, inclusive.

(n) As a condition of participation and in consideration of the joint effort of the local governmental agencies and the department in implementing this section and the ongoing need of local governmental agencies to receive technical support from the department, as well as assistance in claims processing and program monitoring, the local governmental agencies shall cover the costs of the administrative activities performed by the department. Each local governmental agency shall annually pay a portion of the total costs of administrative activities performed by the department through a mechanism agreed to by the department and the local governmental agencies, or if no agreement is reached by August 1 of each year, directly to the state. The department shall determine and report the staffing requirements upon which projected costs will be based. Projected costs shall include the anticipated salaries, benefits, and operating expenses necessary to administer targeted case management.

(o) For the purposes of this section a "local governmental agency" means a county or chartered city.

SEC. 105. Section 14132.47 of the Welfare and Institutions Code is amended to read:

14132.47. (a) It is the intent of the Legislature to provide local governmental agencies the choice of participating in either or both of the Targeted Case Management (TCM) and Administrative Claiming process programs at their option, subject to the requirements of this section and Section 14132.44.

(b) The department may contract with each participating local governmental agency or each local educational consortium to assist with the performance of administrative activities necessary for the proper and efficient administration of the Medi-Cal program, pursuant to Section 1396b(a) of Title 42 of the United States Code, Section 1903a of the federal Social Security Act, and this activity shall be known as the Administrative Claiming process.

(c) (1) As a condition for participation in the Administrative Claiming process, each participating local governmental agency or each local educational consortium shall, for the purpose of claiming federal medicaid matching funds, enter into a contract with the department and shall certify to the department the amount of local governmental agency or each local educational consortium general funds or any other funds allowed under federal law and regulation expended on the allowable administrative activities.

(2) The department shall deny the claim if it determines that the certification is not adequately supported for purposes of federal financial participation.

(d) Each participating local governmental agency or local educational consortium may subcontract with nongovernmental entities to assist with the performance of administrative activities necessary for the proper and efficient administration of the Medi-Cal program under the conditions specified by the department in regulations.

(e) Each Administrative Claiming process contract shall include a requirement that each participating local governmental agency or each local educational consortium submit a claiming plan in a manner that shall be prescribed by the department in regulations, developed in consultation with local governmental agencies.

(f) The department shall require that each participating local governmental agency or each local educational consortium certify to the department both of the following:

(1) The availability and expenditure of 100 percent of the nonfederal share of the cost of performing Administrative Claiming process activities. The funds expended for this purpose shall be from the local governmental agency's general fund or the general funds of local educational agencies or from any other funds allowed under federal law and regulation.

(2) In each fiscal year that its expenditures represent costs that are eligible for federal financial participation for that fiscal year. The department shall deny the claim if it determines that the certification is not adequately supported for purposes of federal financial participation.

(g) (1) Notwithstanding any other provision of this section, the state shall be held harmless, in accordance with paragraphs (2) and (3), from any federal audit disallowance and interest resulting from payments made to a participating local governmental agency or local educational consortium pursuant to this section, less the amounts

already remitted to the state pursuant to subdivision (m) for the disallowed claim.

(2) To the extent that a federal audit disallowance and interest results from a claim or claims for which any participating local governmental agency or local educational consortium has received reimbursement for Administrative Claiming process activities, the department shall recoup from the local governmental agency or local educational consortium that submitted the disallowed claim, through offsets or by a direct billing, amounts equal to the amount of the disallowance and interest, in that fiscal year, less the amounts already remitted to the state pursuant to subdivision (m) for the disallowed claim. All subsequent claims submitted to the department applicable to any previously disallowed administrative activity or claim, may be held in abeyance, with no payment made, until the federal disallowance issue is resolved.

(3) Notwithstanding paragraph (2), to the extent that a federal audit disallowance and interest results from a claim or claims for which the participating local governmental agency or local educational consortium has received reimbursement for Administrative Claiming process activities performed by a nongovernmental entity under contract with, and on behalf of, the participating local governmental agency or local educational consortium, the department shall be held harmless by that particular participating local governmental agency or local educational consortium for 100 percent of the amount of any such federal audit disallowance and interest, less the amounts already remitted to the state pursuant to subdivision (m) for the disallowed claim.

(h) The use of local matching funds required by this section shall not create, lead to, or expand the health care funding obligations or service obligations for current or future years for any participating local governmental agency or local educational consortium, except as required by this section or as may be required by federal law.

(i) The department shall deny any claim from a participating local governmental agency or local educational consortium if the department determines that the claim is not adequately supported in accordance with criteria established pursuant to this subdivision and implementing regulations before it forwards such a claim for reimbursement to the federal medicaid program. In consultation with local government agencies and local educational consortia, the department shall adopt regulations that prescribe the requirements for the submission and payment of claims for administrative activities performed by each participating local governmental agency and local educational consortium.

(j) Administrative activities shall be those determined by the department to be necessary for the proper and efficient administration of the state's medicaid plan and shall be defined in regulation.

(k) If the department denies any claim submitted under this section, the affected participating local governmental agency or local educational consortium may, within 30 days after receipt of written notice of the denial, request that the department reconsider its action. The participating local governmental agency or local educational consortium may request a meeting with the director or his or her designee within 30 days to present its concerns to the department after the request is filed. If the director or his or her designee cannot meet, the department shall respond in writing indicating the specific reasons for which the claim is out of compliance to the participating local governmental agency or local educational consortium in response to its appeal. Thereafter, the decision of the director shall be final.

(*l*) Participating local governmental agencies or local educational consortium may claim the actual costs of nonemergency, nonmedical transportation of Medi-Cal eligibles to Medi-Cal covered services, under guidelines established by the department, to the extent that these costs are actually borne by the participating local governmental agency or local educational consortium. A local educational consortium may only claim for nonemergency, nonmedical transportation of Medi-Cal eligibles for Medi-Cal covered services, through the Medi-Cal administrative activities program. Medi-Cal medical transportation services shall be claimed under the local educational agency Medi-Cal billing option, pursuant to Section 14132.06.

(m) (1) Each participating local governmental agency shall contribute to the department a portion of the agency's general fund that has been made available due to the coverage of administrative activities described in this section under the Medi-Cal program. The contributed funds shall be reinvested in health services through the Medi-Cal program. The total contribution amount shall be equal to 33 $^{1}/_{3}$ percent of amounts made available under this section, but in no case shall the contribution exceed twenty million dollars ($20,000,000) a fiscal year less the amount contributed pursuant to subdivision (m) of Section 14132.44. Beginning with the 1994–95 fiscal year, each local governmental agency's share of the total contribution shall be determined by claims submitted and approved for payment through January 1 of the following calendar year. Claims received and approved for payment after January 1 for dates of service in the previous fiscal year shall be included in the following year's calculation. Each local governmental agency's share of the contribution for the previous fiscal year shall be determined no later than February 15 and shall be remitted to the state no later than April 1 of each year. The contribution amount shall be paid from nonfederal, general fund revenues and shall be deposited in the Administrative Claiming Fund for transfer to the Health Care Deposit Fund.

(2) Moneys received by the department pursuant to this subdivision are hereby continuously appropriated to the department for support of the Medi-Cal program, and the funds shall be administered in accordance with procedures prescribed by the Department of Finance. If not paid as provided in this section, the department may offset payments due to each participating local governmental agency from the state, not related to payments required to be made pursuant to this section in order to recoup these funds for the Administrative Claiming Fund.

(3) This subdivision shall only apply to claims approved for the 1994–95 to 1997–98 fiscal years, inclusive.

(n) As a condition of participation in the Administrative Claiming process and in recognition of revenue generated to each participating local governmental agency and each local educational consortium in the Administrative Claiming process, each participating local governmental agency and each local educational consortium shall pay an annual participation fee through a mechanism agreed to by the state and local governmental agencies and local educational consortia, or, if no agreement is reached by August 1 of each year, directly to the state. The participation fee shall be used to cover the cost of administering the Administrative Claiming process, including, but not limited to, claims processing, technical assistance, and monitoring. The department shall determine and report staffing requirements upon which projected costs will be based. The amount of the participation fee shall be based upon the anticipated salaries, benefits, and operating expenses, to administer the Administrative Claiming process and other costs related to that process.

(o) For the purposes of this section "participating local governmental agency" means a county or chartered city under contract with the department pursuant to subdivision (b).

(p) For purposes of this section, "local educational agency" means a local educational agency, as defined in subdivision (h) of Section 14132.06, that participates under the Administrative Claiming process as a subcontractor to the local educational consortium in its service region.

(q) (1) For purposes of this section, "local educational consortium" means a local agency that is one of the service regions of the California County Superintendent Educational Services Association.

(2) Each local educational consortium shall contract with the department pursuant to paragraph (1) of subdivision (c).

(r) (1) Each participating local educational consortium shall be responsible for the local educational agencies in its service region that participate in the Administrative Claiming process. This responsibility includes, but is not limited to, the preparation and submission of all administrative claiming plans, training of local educational agency staff, overseeing the local educational agency

time survey process, and the submission of detailed quarterly invoices on behalf of any participating local educational agency.

(2) Each participating local educational consortium shall ensure local educational agency compliance with all requirements of the Administrative Claiming process established for local governmental agencies.

(3) Ninety days prior to the initial participation in the Administrative Claiming process, each local educational consortium shall notify the department of its intent to participate in the process, and shall identify each local educational agency that will be participating as its subcontractor.

(s) (1) Each local educational agency that elects to participate in the Administrative Claiming process shall submit claims through its local educational consortium or through the local governmental agency, but not both.

(2) Each local educational agency participating as a subcontractor to a local educational consortium shall comply with all requirements of the Administrative Claiming process established for local governmental agencies.

(t) For the purposes of this section, a "nongovernmental entity" does not include an entity or person administered by, affiliated with, or employed by a participating local governmental agency or a local educational consortium.

(u) The requirements of subdivision (m) shall not apply to claims for administrative activities, pursuant to the Administrative Claiming process, performed by public health programs administered by the state.

(v) A participating local governmental agency or a local educational consortium may charge an administrative fee to any entity claiming Administrative Claiming through that agency.

(w) The department shall continue to administer the Administrative Claiming process in conformity with federal requirements.

(x) The department shall provide technical assistance to all participating local governmental agencies and local educational consortia in order to maximize federal financial participation in the Administrative Claiming process.

(y) This section shall be applicable to Administrative Claiming process activities performed, and to moneys paid to participating local governmental agencies and to local educational consortia in the 1998-99 fiscal year and thereafter for those activities, in the 1994–95 fiscal year and thereafter.

SEC. 106. Section 14132.72 of the Welfare and Institutions Code is amended to read:

14132.72. (a) It is the intent of the Legislature to recognize the practice of telemedicine as a legitimate means by which an individual may receive medical services from a health care provider without person-to-person contact with the provider.

(b) For the purposes of this section, "telemedicine" and "interactive" are defined as those terms are defined in subdivision (a) of Section 2290.5 of the Business and Professions Code.

(c) (1) Commencing July 1, 1997, face-to-face contact between a health care provider and a patient shall not be required under the Medi-Cal program for services appropriately provided through telemedicine, subject to reimbursement policies developed by the Medi-Cal program to compensate licensed health care providers who provide health care services, that are otherwise covered by the Medi-Cal program, through telemedicine. The audio and visual telemedicine system used shall, at a minimum, have the capability of meeting the procedural definition of the Current Procedural Terminology Fourth Edition (CPT-4) codes which represent the service provided through telemedicine. The telecommunications equipment shall be of a level of quality to adequately complete all necessary components to document the level of service for the CPT-4 code billed. If a peripheral diagnostic scope is required to assess the patient, it shall provide adequate resolution or audio quality for decisionmaking.

(2) The department shall report to the appropriate committees of the Legislature, by January 1, 2000, on the application of telemedicine to provide home health care; emergency care; critical and intensive care, including neonatal care; psychiatric evaluation; psychotherapy; and medical management as potential Medi-Cal benefits.

(d) The Medi-Cal program shall not be required to pay for consultation provided by the health care provider by telephone or facsimile machines.

(e) The Medi-Cal program shall pursue private or federal funding to conduct an evaluation of the cost-effectiveness and quality of health care provided through telemedicine by those providers who are reimbursed for telemedicine services by the program.

(f) This section shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2001, deletes or extends that date.

SEC. 107. The Legislature finds and declares as follows:

(a) Article 4.05 (commencing with Section 14139.05) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code (hereafter Article 4.05) defines a strong role for consumers of long-term care, and gives local communities the opportunity to define a long-term care system to meet their needs.

(b) In accordance with Article 4.5 (commencing with Section 14145) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, local organizing groups (LOGs) in at least seven counties have undertaken planning for a suitable long-term care system, and these groups have encountered numerous challenges in advancing their integration planning efforts. Some of these challenges include the following:

(1) Lack of working models for unique systems within California.

(2) Lack of start-up capital for initial design, actuarial analysis, and technical consultation.

(3) Lack of experience in designing an integrated, capitated, at-risk model for this population.

(4) Incomplete information about the target population and costs.

(c) The LOGs have stated that they require funding, information and technical assistance, and would benefit from sharing information regarding options for governance, financing, risk-sharing, federal waivers, service delivery, and management information systems, among others.

(d) Some planning efforts may be less expensive when completed by multiple counties simultaneously, and the LOGs can learn from each other by sharing their successes and failures.

(e) The State Department of Health Services has resource limitations on the technical assistance it can provide to the LOGs.

(f) It is in the interest of the state to accelerate the development of long-term care integration pilot projects (LTCIPPs).

(g) The state wishes to encourage a public-private partnership in establishing the LTCIPPs.

(h) It is therefore in the interest of the state to develop a public-private partnership to facilitate and foster the development of LTCIPPs.

SEC. 108. Article 4.5 (commencing with Section 14145) is added to Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 4.5. Development and Implementation of Long-Term Care Integration Pilot Projects

14145. (a) Beginning with the 1998–99 fiscal year and contingent on appropriation of funds through the Budget Act, the department may contract with a nonprofit entity, incorporated in California that has been formed for the purpose of serving as the center for long-term care integration. The center may serve as a focal point for facilitating the development of community-based local organizing groups through a public-private partnership.

(b) The nonprofit center may do all of the following:

(1) Serve in an advisory capacity to the key stakeholders in long-term care integration, including consumers, consumer advocacy groups, researchers, representatives of service providers and purchasers, and local and state policymakers.

(2) Assemble, organize, and make available technical information, data, expertise, and models on long-term care integration from across the state and nation.

(3) Assist local communities with long-term care planning and analysis, development of service delivery and financing systems, statewide data sharing, and private fund development.

(4) Coordinate goals and activities with the State Department of Health Services.

(c) The center may build and sustain working partnerships by developing and supporting a cross-county, statewide network of consumers, providers and funders, as well as maintaining an ongoing relationship with the state.

(d) The center may assist the local organizing groups (LOGs) in seeking local financial support, as well as to obtain foundation matching funds for statewide grant-making.

(e) The center may coordinate and disseminate long-term care planning information by identifying key long-term care development issues, and disseminating the information to local planning groups, as needed.

(f) The center may facilitate implementation by identifying and sharing useful tools and resources, designing models for service protocols of the local long-term care integration pilot projects, coordinating information systems, standardizing assessment elements, and providing low-cost training and technical assistance to the LOGs as they progress through common tasks necessary for local development and implementation.

(g) The center may collect and track information across LOG sites.

(h) The center may prepare annual progress reports, and shall provide these reports to the department and the budget committees of the Legislature.

14145.1. (a) The department may administer grants for purposes of this article, that shall be awarded through a request for application process.

(1) Grants may be awarded to local organizing groups (LOGs) that are existing or new community-based nonprofit organizations or government entities for purposes of implementing long-term care integration pilot projects, pursuant to Article 4.05 (commencing with Section 14139.05).

(2) Grants may be available for LOGs in the planning phase, or the development phase of the project, or both. Planning phase grants shall be limited to a maximum award of fifty thousand dollars ($50,000). Development phase grants shall be limited to a maximum award of one hundred fifty thousand dollars ($150,000). The planning phase includes activities related to initial planning for a long-term care integration pilot project (LTCIPP). The development phase includes activities for implementing the planning phase, up to actual implementation of the pilot project.

(b) Criteria for grant selection shall include, but not be limited to, the following:

(1) For planning phase grants:

(A) Identification of a LOG committed to development of a LTCIPP that includes major stakeholders, including, but not limited

to, consumers, community-based providers, institutional providers, and public entities.

(B) Evidence of local government support for development of a LTCIPP.

(C) A description of current and planned consumer involvement.

(D) A plan for the use of funds.

(E) Specification of goals and objectives, and a work plan for achieving them.

(F) A proposed strategy for project evaluation.

(2) For development phase grants:

(A) Identification of the authorized grantee sanctioned by the local government entity.

(B) Identification of an entity for operation of the LTCIPP.

(C) Definition of a governance structure.

(D) An adopted work plan that includes all of the following:

(i) A vision statement describing the long-term care system for the community.

(ii) Description of the covered scope of services and programs to be integrated at the local level.

(iii) Description of the target population.

(iv) Plan for integration of funding for those services.

(E) Specific work goals for the development phase.

(F) A work schedule for completion.

(G) A proposed strategy for project evaluation.

(3) Both planning phase and development phase grant funds may be used for, but are not limited to, the following purposes:

(A) Staff support.

(B) Consulting contracts.

(C) Community organizing support.

(D) Data Analysis.

(c) Grantees shall be required to match a portion of the grant awarded, either with cash, or in-kind contributions totaling 20 percent of the total grant. The match required by this subdivision shall be supplemental to the funds appropriated for the LTCIPP.

(d) On or before March 1, 1999, the department shall provide the Legislature with a status update on the progress of the grant program process, including grant awards and any administrative concerns.

SEC. 109. Section 14163 of the Welfare and Institutions Code, as amended by Chapter 71 of the Statutes of 1998, is amended to read:

14163. (a) For purposes of this section, the following definitions shall apply:

(1) "Public entity" means a county, a city, a city and county, the State of California, the University of California, a local health care district, a local health authority, or any other political subdivision of the state.

(2) "Hospital" means a health facility that is licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the

Health and Safety Code to provide acute inpatient hospital services, and includes all components of the facility.

(3) "Disproportionate share hospital" means a hospital providing acute inpatient services to Medi-Cal beneficiaries that meets the criteria for disproportionate share status relating to acute inpatient services set forth in Section 14105.98.

(4) "Disproportionate share list" means the annual list of disproportionate share hospitals for acute inpatient services issued by the department pursuant to Section 14105.98.

(5) "Fund" means the Medi-Cal Inpatient Payment Adjustment Fund.

(6) "Eligible hospital" means, for a particular state fiscal year, a hospital on the disproportionate share list that is eligible to receive payment adjustment amounts under Section 14105.98 with respect to that state fiscal year.

(7) "Transfer year" means the particular state fiscal year during which, or with respect to which, public entities are required by this section to make an intergovernmental transfer of funds to the Controller.

(8) "Transferor entity" means a public entity that, with respect to a particular transfer year, is required by this section to make an intergovernmental transfer of funds to the Controller.

(9) "Transfer amount" means an amount of intergovernmental transfer of funds that this section requires for a particular transferor entity with respect to a particular transfer year.

(10) "Intergovernmental transfer" means a transfer of funds from a public entity to the state, that is local government financial participation in Medi-Cal pursuant to the terms of this section.

(11) "Licensee" means an entity that has been issued a license to operate a hospital by the department.

(12) "Annualized Medi-Cal inpatient paid days" means the total number of Medi-Cal acute inpatient hospital days, regardless of dates of service, for which payment was made by or on behalf of the department to a hospital, under present or previous ownership, during the most recent calendar year ending prior to the beginning of a particular transfer year, including all Medi-Cal acute inpatient covered days of care for hospitals that are paid on a different basis than per diem payments.

(13) "Medi-Cal acute inpatient hospital day" means any acute inpatient day of service attributable to patients who, for those days, were eligible for medical assistance under the California state plan, including any day of service that is reimbursed on a basis other than per diem payments.

(14) "OBRA 1993 payment limitation" means the hospital-specific limitation on the total annual amount of payment adjustments to each eligible hospital under the payment adjustment program that can be made with federal financial participation under Section

1396r-4(g) of Title 42 of the United States Code as implemented pursuant to the Medi-Cal State Plan.

(b) The Medi-Cal Inpatient Payment Adjustment Fund is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, the fund shall be continuously appropriated to, and under the administrative control of, the department for the purposes specified in subdivision (d). The fund shall consist of the following:

(1) Transfer amounts collected by the Controller under this section, whether submitted by transferor entities pursuant to applicable provisions of this section or obtained by offset pursuant to subdivision (j).

(2) Any other intergovernmental transfers deposited in the fund, as permitted by Section 14164.

(3) Any interest that accrues with respect to amounts in the fund.

(c) Moneys in the fund, which shall not consist of any state general funds, shall be used as the source for the nonfederal share of payments to hospitals pursuant to Section 14105.98. Moneys shall be allocated from the fund by the department and matched by federal funds in accordance with customary Medi-Cal accounting procedures, and used to make payments pursuant to Section 14105.98.

(d) Except as otherwise provided in Section 14105.98 or in any provision of law appropriating a specified sum of money to the department for administering this section and Section 14105.98, moneys in the fund shall be used only for the following:

(1) Payments to hospitals pursuant to Section 14105.98.

(2) Transfers to the Health Care Deposit Fund as follows:

(A) In the amount of two hundred thirty-nine million seven hundred fifty-seven thousand six hundred ninety dollars ($239,757,690) for the 1994–95 and 1995–96 fiscal years.

(B) In the amount of two hundred twenty-nine million seven hundred fifty-seven thousand six hundred ninety dollars ($229,757,690) for the 1996–97 fiscal year.

(C) In the amount of one hundred fifty-four million seven hundred fifty-seven thousand six hundred ninety dollars ($154,757,690) for the 1997–98 fiscal year.

(D) In the amount of one hundred fourteen million seven hundred fifty-seven thousand six hundred ninety dollars ($114,757,690) for the 1998–99 fiscal year and each fiscal year thereafter.

(E) The transfers from the fund shall be made in six equal monthly installments to the Medi-Cal local assistance appropriation item (Item 4260-101-001 of the annual Budget Act) in support of Medi-Cal expenditures. The first installment shall accrue in October of each transfer year, and all other installments shall accrue monthly thereafter from November through March.

(e) For the 1991–92 state fiscal year, the department shall determine, no later than 70 days after the enactment of this section, the transferor entities for the 1991–92 transfer year. To make this determination, the department shall utilize the disproportionate share list for the 1991–92 fiscal year issued by the department pursuant to paragraph (1) of subdivision (f) of Section 14105.98. The department shall identify each eligible hospital on the list for which a public entity is the licensee as of July 1, 1991. The public entity that is the licensee of each identified eligible hospital shall be a transferor entity for the 1991–92 transfer year.

(f) The department shall determine, no later than 70 days after the enactment of this section, the transfer amounts for the 1991–92 transfer year.

The transfer amounts shall be determined as follows:

(1) The eligible hospitals for 1991–92 shall be identified. For each hospital, the applicable total per diem payment adjustment amount under Section 14105.98 for the 1991–92 transfer year shall be computed. This amount shall be multiplied by 80 percent of the eligible hospital's annualized Medi-Cal inpatient paid days as determined from all Medi-Cal paid claims records available through April 1, 1991. The products of these calculations for all eligible hospitals shall be added together to determine an aggregate sum for the 1991–92 transfer year.

(2) The eligible hospitals for 1991–92 involving transferor entities as licensees shall be identified. For each hospital, the applicable total per diem payment adjustment amount under Section 14105.98 for the 1991–92 transfer year shall be computed. This amount shall be multiplied by 80 percent of the eligible hospital's annualized Medi-Cal inpatient paid days as determined from all Medi-Cal paid claims records available through April 1, 1991. The products of these calculations for all eligible hospitals with transferor entities as licensees shall be added together to determine an aggregate sum for the 1991–92 transfer year.

(3) The aggregate sum determined under paragraph (1) shall be divided by the aggregate sum determined under paragraph (2), yielding a factor to be utilized in paragraph (4).

(4) The factor determined in paragraph (3) shall be multiplied by the amount determined for each hospital under paragraph (2). The product of this calculation for each hospital in paragraph (2) shall be divided by 1.771, yielding a transfer amount for the particular transferor entity for the transfer year.

(g) For the 1991–92 transfer year, the department shall notify each transferor entity in writing of its applicable transfer amount or amounts.

(h) For the 1992–93 transfer year and subsequent transfer years, transfer amounts shall be determined in the same procedural manner as set forth in subdivision (f), except:

(1) The department shall use all of the following:

(A) The disproportionate share list applicable to the particular transfer year to determine the eligible hospitals.

(B) The payment adjustment amounts calculated under Section 14105.98 for the particular transfer year. These amounts shall take into account any projected or actual increases or decreases in the size of the payment adjustment program as are required under Section 14105.98 for the particular year in question, including any decreases resulting from the application of the OBRA 1993 payment limitation. The department may issue interim, revised, and supplemental transfer requests as necessary and appropriate to address changes in payment adjustment levels that occur under Section 14105.98. All transfer requests, or adjustments thereto, issued to transferor entities by the department shall meet the requirements set forth in subdivision (i).

(C) Data regarding annualized Medi-Cal inpatient paid days for the most recent calendar year ending prior to the beginning of the particular transfer year, as determined from all Medi-Cal paid claims records available through April 1 preceding the particular transfer year.

(D) The status of public entities as licensees of eligible hospitals as of July 1 of the particular transfer year.

(E) For the 1993–94 transfer year and subsequent transfer years, the divisor to be used for purposes of the calculation referred to in paragraph (4) of subdivision (f) shall be determined by the department. The divisor shall be calculated to ensure that the appropriate amount of transfers from transferor entities are received into the fund to satisfy the requirements of Section 14105.98, exclusive of the amounts described in paragraph (2) of this subdivision, and to satisfy the requirements of paragraph (2) of subdivision (d), for the particular transfer year. For the 1993–94 transfer year, the divisor shall be 1.742.

(F) The following provisions shall apply for certain transfer amounts relating to nonsupplemental payments under Section 14105.98:

(i) For the 1998–99 transfer year, transfer amounts shall be determined as though the payment adjustment amounts arising pursuant to subdivision (ag) of Section 14105.98 were increased by the amounts paid or payable pursuant to subdivision (af) of Section 14105.98.

(ii) Any transfer amounts paid by a transferor entity pursuant to subparagraph (C) of paragraph (2) shall serve as credit for the particular transferor entity against an equal amount of its transfer obligation for the 1998–99 transfer year.

(iii) For the 1999–2000 transfer year, transfer amounts shall be determined as though the amount to be transferred to the Health Care Deposit Fund, as referred to in paragraph (2) of subdivision (d), were reduced by 28 percent.

(2) (A) Except as provided in subparagraphs (B), (C), and (D), for the 1993–94 transfer year and subsequent transfer years, transfer amounts shall be increased for the particular transfer year in the amounts necessary to fund the nonfederal share of the total supplemental payment adjustment amounts of all types that arise under Section 14105.98. These increases shall be paid only by those transferor entities that are licensees of hospitals that are projected to receive some or all of the particular supplemental payments, and the increases shall be paid by the transferor entities on a pro rata basis in connection with the particular supplemental payments. For purposes of this paragraph, supplemental payment adjustment amounts shall be deemed to arise for the particular transfer year as of the date specified in Section 14105.98. Transfer amounts to fund the nonfederal share of the payments shall be paid for the particular transfer year within 20 days after the department notifies the transferor entity in writing of the additional transfer amount to be paid.

(B) For the 1995–96 transfer year, the nonfederal share of the secondary supplemental payment adjustments described in paragraph (9) of subdivision (y) of Section 14105.96 shall be funded as follows:

(i) Ninety-nine percent of the nonfederal share shall be funded by a transfer from the University of California.

(ii) One percent of the nonfederal share shall be funded by transfers from those public entities that are the licensees of the hospitals included in the "other public hospitals" group referred to in clauses (ii) and (iii) of subparagraph (B) of paragraph (9) of subdivision (y) of Section 14105.98. The transfer responsibilities for this 1 percent shall be allocated to the particular public entities on a pro rata basis, based on a formula or formulae customarily used by the department for allocating transfer amounts under this section. The formula or formulae shall take into account, through reallocation of transfer amounts as appropriate, the situation of hospitals whose secondary supplemental payment adjustments are restricted due to the application of the limitation set forth in clause (v) of subparagraph (B) of paragraph (9) of subdivision (y) of Section 14105.98.

(iii) All transfer amounts under this subparagraph shall be paid by the particular transferor entities within 30 days after the department notifies the transferor entity in writing of the transfer amount to be paid.

(C) For the 1997–98 transfer year, transfer amounts to fund the nonfederal share of the supplemental payment adjustments described in subdivision (af) of Section 14105.98 shall be funded by a transfer from the County of Los Angeles.

(D) (i) For the 1998–99 transfer year, transfer amounts to fund the nonfederal share of the supplemental payment adjustment

amounts arising under subdivision (ah) of Section 14105.98 shall be increased as set forth in clause (ii).

(ii) The transfer amounts otherwise calculated to fund the supplemental payment adjustments referred to in clause (i) shall be increased on a pro rata basis by an amount equal to 28 percent of the amount to be transferred to the Health Care Deposit Fund for the 1999–2000 fiscal year, as referred to in paragraph (2) of subdivision (d).

(3) The department shall prepare preliminary analyses and calculations regarding potential transfer amounts, and potential transferor entities shall be notified by the department of estimated transfer amounts as soon as reasonably feasible regarding any particular transfer year. Written notices of transfer amounts shall be issued by the department as soon as possible with respect to each transfer year. All state agencies shall take all necessary steps in order to supply applicable data to the department to accomplish these tasks. The Office of Statewide Health Planning and Development shall provide to the department quarterly access to the edited and unedited confidential patient discharge data files for all Medi-Cal eligible patients. The department shall maintain the confidentiality of that data to the same extent as is required of the Office of Statewide Health Planning and Development. In addition, the Office of Statewide Health Planning and Development shall provide to the department, not later than March 1 of each year, the data specified by the department, as the data existed on the statewide data base file as of February 1 of each year, from all of the following:

(A) Hospital annual disclosure reports, filed with the Office of Statewide Health Planning and Development pursuant to Section 443.31 or 128735 of the Health and Safety Code, for hospital fiscal years that ended during the calendar year ending 13 months prior to the applicable February 1.

(B) Annual reports of hospitals, filed with the Office of Statewide Health Planning and Development pursuant to Section 439.2 or 127285 of the Health and Safety Code, for the calendar year ending 13 months prior to the applicable February 1.

(C) Hospital patient discharge data reports, filed with the Office of Statewide Health Planning and Development pursuant to subdivision (g) of Section 443.31 or 128735 of the Health and Safety Code, for the calendar year ending 13 months prior to the applicable February 1.

(D) Any other materials on file with the Office of Statewide Health Planning and Development.

(4) Transfer amounts calculated by the department may be increased or decreased by a percentage amount consistent with the Medi-Cal state plan.

(5) For the 1993–94 fiscal year, the transfer amount that would otherwise be required from the University of California shall be increased by fifteen million dollars ($15,000,000).

(6) Notwithstanding any other provision of law, except for subparagraph (D) of paragraph (2), the total amount of transfers required from the transferor entities for any particular transfer year shall not exceed the sum of the following:

(A) The amount needed to fund the nonfederal share of all payment adjustment amounts applicable to the particular payment adjustment year as calculated under Section 14105.98. Included in the calculations for this purpose shall be any decreases in the program as a whole, and for individual hospitals, that arise due to the provisions of Section 1396r-4(f) or (g) of Title 42 of the United States Code.

(B) The amount needed to fund the transfers to the Health Care Deposit Fund, as referred to in subdivision (d).

(7) (A) Except as provided in subparagraphs (B) and (C) and in paragraph (2) of subdivision (j), and except for a prudent reserve not to exceed two million dollars ($2,000,000) in the Medi-Cal Inpatient Payment Adjustment Fund, any amounts in the fund, including interest that accrues with respect to the amounts in the fund, that are not expended, or estimated to be required for expenditure, under Section 14105.98 with respect to a particular transfer year shall be returned on a pro rata basis to the transferor entities for the particular transfer year within 120 days after the department determines that the funds are not needed for an expenditure in connection with the particular transfer year.

(B) The department shall determine the interest amounts that have accrued in the fund from its inception through June 30, 1995, and, no later than January 1, 1996, shall distribute these interest amounts to transferor entities:

(C) With respect to those particular amounts in the fund resulting solely from the provisions of subparagraph (D) of paragraph (2), the department shall determine by September 30, 1999, whether these particular amounts exceed 28 percent of the amount to be transferred to the Health Care Deposit Fund for the 1999–2000 fiscal year, as referred to in paragraph (2) of subdivision (d). Any excess amount so determined shall be returned to the particular transferor entities on a pro rata basis no later than October 31, 1999.

(D) Regarding any funds returned to a transferor entity under subparagraph (A) or (C), or interest amounts distributed to a transferor entity under subparagraph (B), the department shall provide to the transferor entity a written statement that explains the basis for the particular return or distribution of funds and contains the general calculations used by the department in determining the amount of the particular return or distribution of funds.

(i) (1) For the 1991–92 transfer year, each transferor entity shall pay its transfer amount or amounts to the Controller, for deposit in the fund, in eight equal installments.

(2) (A) Except as provided in subparagraphs (B) and (C), for the 1992–93 transfer year and subsequent transfer years, each transferor entity shall pay its transfer amount or amounts to the Controller, for

deposit in the fund, in eight equal installments. However, for the 1997–98 and subsequent transfer years, each transferor entity shall pay its transfer amount or amounts to the Controller, for deposit in the fund, in the form of periodic installments according to a timetable established by the department. The timetable shall be structured to effectuate, on a reasonable basis, the prompt distribution of all nonsupplemental payment adjustments under Section 14105.98, and transfers to the Health Care Deposit Fund under subdivision (d).

(B) For the 1994–95 transfer year, each transferor entity shall pay its transfer amount or amounts to the Controller, for deposit in the fund, in five equal installments.

(C) For the 1995–96 transfer year, each transferor entity shall pay its transfer amount or amounts to the Controller, for deposit in the fund, in five equal installments.

(D) Except as otherwise specifically provided, subparagraphs (A) to (C), inclusive, shall not apply to increases in transfer amounts described in paragraph (2) of subdivision (h) or to additional transfer amounts described in subdivision (o).

(E) All requests for transfer payments, or adjustments thereto, issued by the department shall be in writing and shall include (i) an explanation of the basis for the particular transfer request or transfer activity, (ii) a summary description of program funding status for the particular transfer year, and (iii) the general calculations used by the department in connection with the particular transfer request or transfer activity.

(3) A transferor entity may use any of the following funds for purposes of meeting its transfer obligations under this section:

(A) General funds of the transferor entity.

(B) Any other funds permitted by law to be used for these purposes, except that a transferor entity shall not submit to the Controller any federal funds unless those federal funds are authorized by federal law to be used to match other federal funds. In addition, no private donated funds from any health care provider, or from any person or organization affiliated with the health care provider, shall be channeled through a transferor entity or any other public entity to the fund, unless the donated funds will qualify under federal rules as a valid component of the nonfederal share of the Medi-Cal program and will be matched by federal funds. The transferor entity shall be responsible for determining that funds transferred meet the requirements of this subparagraph.

(j) (1) If a transferor entity does not submit any transfer amount within the time period specified in this section, the Controller shall offset immediately the amount owed against any funds which otherwise would be payable by the state to the transferor entity. The Controller, however, shall not impose an offset against any particular funds payable to the transferor entity where the offset would violate state or federal law.

(2) Where a withhold or a recoupment occurs pursuant to the provisions of paragraph (2) of subdivision (r) of Section 14105.98, the nonfederal portion of the amount in question shall remain in the fund, or shall be redeposited in the fund by the department, as applicable. The department shall then proceed as follows:

(A) If the withhold or recoupment was imposed with respect to a hospital whose licensee was a transferor entity for the particular state fiscal year to which the withhold or recoupment related, the nonfederal portion of the amount withheld or recouped shall serve as a credit for the particular transferor entity against an equal amount of transfer obligations under this section, to be applied whenever the transfer obligations next arise. Should no such transfer obligation arise within 180 days, the department shall return the funds in question to the particular transferor entity within 30 days thereafter.

(B) For other situations, the withheld or recouped nonfederal portion shall be subject to paragraph (7) of subdivision (h).

(k) All transfer amounts received by the Controller or amounts offset by the Controller shall immediately be deposited in the fund.

(*l*) For purposes of this section, the disproportionate share list utilized by the department for a particular transfer year shall be identical to the disproportionate share list utilized by the department for the same state fiscal year for purposes of Section 14105.98. Nothing on a disproportionate share list, once issued by the department, shall be modified for any reason other than mathematical or typographical errors or omissions on the part of the department or the Office of Statewide Health Planning and Development in preparation of the list.

(m) Neither the intergovernmental transfers required by this section, nor any elective transfer made pursuant to Section 14164, shall create, lead to, or expand the health care funding or service obligations for current or future years for any transferor entity, except as required of the state by this section or as may be required by federal law, in which case the state shall be held harmless by the transferor entities on a pro rata basis.

(n) Except as otherwise permitted by state and federal law, no transfer amount submitted to the Controller under this section, and no offset by the Controller pursuant to subdivision (j), shall be claimed or recognized as an allowable element of cost in Medi-Cal cost reports submitted to the department.

(o) Whenever additional transfer amounts are required to fund the nonfederal share of payment adjustment amounts under Section 14105.98 that are distributed after the close of the particular payment adjustment year to which the payment adjustment amounts apply, the additional transfer amounts shall be paid by the parties who were the transferor entities for the particular transfer year that was concurrent with the particular payment adjustment year. The additional transfer amounts shall be calculated under the formula that was in effect during the particular transfer year. For transfer

years prior to the 1993–94 transfer year, the percentage of the additional transfer amounts available for transfer to the Health Care Deposit Fund under subdivision (d) shall be the percentage that was in effect during the particular transfer year. These additional transfer amounts shall be paid by transferor entities within 20 days after the department notifies the transferor entity in writing of the additional transfer amount to be paid.

(p) (1) Ten million dollars ($10,000,000) of the amount transferred from the Medi-Cal Inpatient Payment Adjustment Fund to the Health Care Deposit Fund due to amounts transferred attributable to years prior to the 1993–94 fiscal year is hereby appropriated without regard to fiscal years to the State Department of Health Services to be used to support the development of managed care programs under the department's plan to expand Medi-Cal managed care.

(2) These funds shall be used by the department for both of the following purposes: (A) distributions to counties or other local entities that contract with the department to receive those funds to offset a portion of the costs of forming the local initiative entity, and (B) distributions to local initiative entities that contract with the department to receive those funds to offset a portion of the costs of developing the local initiative health delivery system in accordance with the department's plan to expand Medi-Cal managed care.

(3) Entities contracting with the department for any portion of the ten million dollars ($10,000,000) shall meet the objectives of the department's plan to expand Medi-Cal managed care with regard to traditional and safety net providers.

(4) Entities contracting with the department for any portion of the ten million dollars ($10,000,000) may be authorized under those contracts to utilize their funds to provide for reimbursement of the costs of local organizations and entities incurred in participating in the development and operation of a local initiative.

(5) To the full extent permitted by state and federal law, these funds shall be distributed by the department for expenditure at the local level in a manner that qualifies for federal financial participation under the medicaid program.

(q) (1) Any local initiative entity that has performed unanticipated additional work for the purposes identified in subparagraph (B) of paragraph (2) of subdivision (p) resulting in additional costs attributable to the development of its local initiative health delivery system, may file a claim for reimbursement with the department for the additional costs incurred due to delays in start dates through the 1996–97 fiscal year. The claim shall be filed by the local initiative entity not later than 90 days after the effective date of the act adding this subdivision, and shall not seek extra compensation for any sum that is or could have been asserted pursuant to the contract disputes and appeals resolution provisions of the local initiative entity's respective two-plan model contract. All claims for

unanticipated additional incurred costs shall be submitted with adequate supporting documentation including, but not limited to, all of the following:

(A) Invoices, receipts, job descriptions, payroll records, work plans, and other materials that identify the unanticipated additional claimed and incurred costs.

(B) Documents reflecting mitigation of costs.

(C) To the extent lost profits are included in the claim, documentation identifying those profits and the manner of calculation.

(D) Documents reflecting the anticipated start date, the actual start date, and reasons for the delay between the dates, if any.

(2) In determining any amount to be paid, the department shall do all of the following:

(A) Conduct a fiscal analysis of the local initiative entity's claimed costs.

(B) Determine the appropriate amount of payment, after taking into consideration the supporting documentation and the results of any audit.

(C) Provide funding for any such payment, as approved by the Department of Finance through the deficiency process.

(D) Complete the determination required in subparagraph (B) within six months after receipt of a local initiative entity's completed claim and supporting documentation. Prior to final determination, there shall be a review and comment period for that local initiative entity.

(E) Make reasonable efforts to obtain federal financial participation. In the event federal financial participation is not allowed for this payment, the state's payment shall be 50 percent of the total amount determined to be payable.

SEC. 110. Section 16809.45 is added to the Welfare and Institutions Code, to read:

16809.45. (a) In addition to those powers specified for the County Medical Services Program Governing Board, as set forth in Section 16809.4, the board may contract with the department for interfund transfers and joint or shared use of fiscal intermediaries, as may be needed, to provide for the continuous and uninterrupted operation of the Healthy Families Program (Part 6.2 (commencing with Section 12693) of Division 3 of the Insurance Code) and the Children's Treatment Program otherwise authorized by law.

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

SEC. 111. (a) The sum of two million six hundred thousand dollars ($2,600,000) is hereby appropriated from the Proposition 98 Reversion Account to a consortium of county offices of education, on a one-time basis, for three-year grants, beginning with the 1998–99

fiscal year, for the purpose of supporting technical assistance and focussed group training to teach school district personnel how to maximize reimbursements of federal funds for Medi-Cal services and case management.

(b) (1) There is hereby created, for purposes of this section, a technical advisory committee, which shall be composed of one representative from each of the 11 school superintendent regions, representatives from appropriate state departments and agencies, representatives from various school health and social services organizations, four members representing large school districts, four members representing medium school districts, four members representing small school districts, and representatives from various parent and community services organizations.

(2) Expenses for the technical advisory committee created pursuant to paragraph (1) shall not exceed forty-five thousand dollars ($45,000) per year of the funds appropriated by this section.

(c) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by subdivision (a) of Section 41202 of the Education Coke, for the 1997–98 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XVIII B," as defined in subdivision (e) of Section 41202 of the Education Code, for the 1997–98 fiscal year.

SEC. 112. (a) The State Department of Health Services may adopt emergency regulations to implement this act in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(b) (1) The State Department of Health Services may adopt emergency regulations to implement any new Medi-Cal benefits established by the Budget Act of 1998 in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(2) In the regulations described in paragraph (1), the department may define terms and prescribe requirements applicable to those benefits, including, but not limited to, the following:

(A) The provider types and size of provider office that are eligible for payment for providing this benefit.

(B) The criteria required to be met for payment.

(C) The reimbursement rates for the services.

(D) Any certificate or license requirements that are required to be met by individuals providing the services.

(c) The initial adoption of emergency regulations described in subdivisions (a) and (b) following the effective date of this section and one readoption of those initial regulations shall be deemed to be emergency and necessary for the immediate preservation of the

public peace, health and safety, or general welfare. Initial emergency regulations and the first readoption of those regulations shall be exempt from review by the Office of Administrative Law. The emergency regulations authorized by this section and the readoption of those regulations shall be submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations and shall remain in effect for no more than 180 days.

SEC. 113. 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, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 114. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or 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 administration of this act relating to health care for the entire 1998–99 fiscal year, it is necessary that this act go into immediate effect.

CHAPTER 311

An act to amend Sections 56140, 56200, 56205, and 56366 of, to add Sections 49069.5 and 56366.8 to, and to add Chapter 5.5 (commencing with Section 48850) to Part 27 of, the Education Code, to add Sections 7911, 7911.1, and 7912 to the Family Code, to amend Sections 1522, 1522.03, 1522.04, 1522.1, 1522.4, 1534, 1538, 1538.5, 1548, 1550, 1558, 1558.1, 1563, 1568.082, 1568.09, 1568.092, 1568.093, 1569.17, 1569.172, 1569.50, 1569.58, 1569.59, 1569.617, 1596.603, 1596.871, 1596.8713, 1596.877, 1596.885, 1596.8897, and 1596.8898 of, to add Sections 1520.1, 1520.11, 1522.02, 1522.41, 1522.42, 1522.43, 1534.5, 1568.042, 1569.1515, and 1596.952 to, the Health and Safety Code, to amend Section 11174.3 of the Penal Code, and to amend Sections 366, 727.1, 827, 10609.3, 11402, 11461, 11462, 11463, 11465, 16501.1, and 18358.30 of, to add Sections 361.21, 5867.5, 11466.21, 16501.2, and 16516.5 to, to add Chapter 2.5 (commencing with Section 16160) to Part 4 of, and to add Chapter 12.86 (commencing with Section 18987.6) to Part 6 of, Division 9 of, and to repeal Sections 11404.5 and 11467 of, the Welfare

and Institutions Code, relating to human services, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 18, 1998. Filed with Secretary of State August 19, 1998.]

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

SECTION 1. Chapter 5.5 (commencing with Section 48850) is added to Part 27 of the Education Code, to read:

CHAPTER 5.5. EDUCATIONAL PLACEMENT OF PUPILS RESIDING IN LICENSED CHILDREN'S INSTITUTIONS

48850. (a) Every county office of education shall make available to agencies that place children in licensed children's institutions information on educational options for children residing in licensed children's institutions within the jurisdiction of the county office of education for use by the placing agencies in assisting parents and foster children to choose educational placements.

(b) For purposes of individuals with exceptional needs residing in licensed children's institutions, making a copy of the annual service plan, prepared pursuant to subdivision (g) of Section 56205, available to those special education local plan areas that have revised their local plans pursuant to Section 56836.03 shall meet the requirements of subdivision (a).

48852. Every agency that places a child in a licensed children's institution shall notify the local educational agency at the time a pupil is placed in a licensed children's institution. As part of that notification, the placing agency shall provide any available information on immediate past educational placements to facilitate prompt transfer of records and appropriate educational placement. Nothing in this section shall be construed to prohibit prompt educational placement prior to notification.

48854. A licensed children's institution or nonpublic, nonsectarian school, or agency may not require as a condition of placement that educational authority for a child, as defined in Section 48859 be designated to that institution, school, or agency.

48856. A local educational agency shall invite at least one noneducational agency representative that has placement responsibility for a pupil residing in a licensed children's institution to collaborate with the local educational agency in the monitoring of a placement in a nonpublic, nonsectarian school or agency.

48859. For purposes of this chapter, "educational authority" means an entity designated to represent the interests of a child for educational and related services.

SEC. 2. Section 49069.5 is added to the Education Code, to read:

49069.5. (a) The Legislature finds and declares that the mobility of pupils in foster care often disrupts their educational experience. The Legislature also finds that efficient transfer of pupil records is a critical factor in the swift placement of foster children in educational settings.

(b) Upon the request of a county social service or probation department, a regional center for the developmentally disabled, or other placing agency, a local education agency with which a pupil in foster care has most recently been enrolled that has been informed of the next educational placement of the pupil shall cooperate with the county social service or probation department to ensure that the pupil's education record is transferred to the receiving local education agency in a timely manner.

(c) Whenever a local educational agency with which a pupil in foster care has most recently been enrolled is informed of the next educational placement of the pupil, that local educational agency shall cooperate with the county social service or probation department to ensure that educational background information for that pupil's health and educational record, as described in Section 16010 of the Welfare and Institutions Code, is transferred to the receiving local educational agency in a timely manner.

(d) Information provided pursuant to subdivision (c) of this section shall include, but not be limited to the following:

(1) The location of the pupil's records.

(2) The last school and teacher of the pupil.

(3) The pupil's current grade level.

(4) Any information deemed necessary to enable enrollment at the receiving school, to the extent allowable under state and federal law.

(e) Notice shall be made within five working days and information transferred within five additional working days of receipt of information regarding the new educational placement of the pupil in foster care.

SEC. 3. Section 56140 of the Education Code is amended to read:

56140. County offices shall do all of the following:

(a) Initiate and submit to the superintendent a countywide plan for special education which demonstrates the coordination of all local plans submitted pursuant to Section 56200 and which ensures that all individuals with exceptional needs residing within the county, including those enrolled in alternative education programs, including, but not limited to, alternative schools, charter schools, opportunity schools and classes, community day schools operated by school districts, community schools operated by county offices of education, and juvenile court schools, will have access to appropriate special education programs and related services. However, a county office shall not be required to submit a countywide plan when all the districts within the county elect to submit a single local plan.

(b) Within 45 days, approve or disapprove any proposed local plan submitted by a district or group of districts within the county or counties. Approval shall be based on the capacity of the district or districts to ensure that special education programs and services are provided to all individuals with exceptional needs.

(1) If approved, the county office shall submit the plan with comments and recommendations to the superintendent.

(2) If disapproved, the county office shall return the plan with comments and recommendations to the district. This district may immediately appeal to the superintendent to overrule the county office's disapproval. The superintendent shall make a decision on an appeal within 30 days of receipt of the appeal.

(3) A local plan may not be implemented without approval of the plan by the county office or a decision by the superintendent to overrule the disapproval of the county office.

(c) Participate in the state onsite review of the district's implementation of an approved local plan.

(d) Join with districts in the county which elect to submit a plan or plans pursuant to subdivision (c) of Section 56195.1. Any plan may include more than one county, and districts located in more than one county. Nothing in this subdivision shall be construed to limit the authority of a county office to enter into other agreements with these districts and other districts to provide services relating to the education of individuals with exceptional needs.

(e) For each special education local plan area located within the jurisdiction of the county office of education that has submitted a revised local plan pursuant to Section 56836.03, the county office shall comply with Section 48850, as it relates to individuals with exceptional needs, by making available to agencies that place children in licensed children's institutions a copy of the annual service plan adopted pursuant to subdivision (g) of Section 56205.

SEC. 4. Section 56200 of the Education Code, as amended by Chapter 89 of the Statutes of 1998, is amended to read:

56200. Each local plan submitted to the superintendent under this part shall contain all the following:

(a) Compliance assurances, including general compliance 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 this part.

(b) A description of services to be provided by each district and county office. This description shall demonstrate that all individuals with exceptional needs shall have access to services and instruction appropriate to meet their needs as specified in their individualized education programs.

(c) (1) A description of the governance and administration of the plan, including the role of county office and district governing board members.

(2) Multidistrict plans, submitted pursuant to subdivision (b) or (c) of Section 56195.1, shall specify the responsibilities of each participating county office and district governing board in the policymaking process, the responsibilities of the superintendents of each participating district and county in the implementation of the plan, and the responsibilities of district and county administrators of special education in coordinating the administration of the local plan.

(d) Copies of joint powers agreements or contractual agreements, as appropriate, for districts and counties that elect to enter into those agreements pursuant to subdivision (b) or (c) of Section 56170.

(e) An annual budget plan to allocate instructional personnel service units, support services, and transportation services directly to entities operating those services and to allocate regionalized services funds to the county office, responsible local agency, or other alternative administrative structure. The annual budget plan shall be adopted at a public hearing held by the district, special education local plan area, or county office, as appropriate. Notice of this hearing shall be posted in each school in the local plan area at least 15 days prior to the hearing. The annual budget plan may be revised during the fiscal year, and these revisions may be submitted to the superintendent as amendments to the allocations set forth in the plan. However, the revisions shall, prior to submission to the superintendent, be approved according to the policymaking process, established pursuant to paragraph (2) of subdivision (c).

(f) Verification that the plan has been reviewed by the community advisory committee and that the committee had at least 30 days to conduct this review prior to submission of the plan to the superintendent.

(g) A description of the identification, referral, assessment, instructional planning, implementation, and review in compliance with Chapter 4 (commencing with Section 56300).

(h) A description of the process being utilized to meet the requirements of Section 56303.

(i) A description of the process being utilized to meet the requirements of the California Early Intervention Services Act, Title 14 (commencing with Section 95000) of the Government Code.

(j) A description of the process being utilized to oversee and evaluate placements in nonpublic, nonsectarian schools and the method for ensuring that all requirements of each pupil's individualized education program are being met. This description shall include a method for evaluating whether the pupil is making appropriate educational progress.

SEC. 5. Section 56205 of the Education Code, as amended by Chapter 89 of the Statutes of 1998, is amended to read:

56205. Each special education local plan area shall submit a local plan to the superintendent under this part. The local plan shall contain all the following:

(a) Compliance assurances, including general compliance 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), the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), federal regulations relating thereto, and this part.

(b) (1) A description of the governance and administration of the plan, including identification of the governing body of a multidistrict plan or the individual responsible for administration in a single district plan, and a description of the elected officials to whom the governing body or individual is responsible.

(2) A description of the regionalized operations and services listed in Section 56836.23 and the direct instructional support provided by program specialists in accordance with Section 56368 to be provided through the plan.

(3) Multidistrict plans, submitted pursuant to subdivision (b) or (c) of Section 56195.1, shall specify the responsibilities of each participating county office and district governing board in the policymaking process, the responsibilities of the superintendents of each participating district and county in the implementation of the plan, and the responsibilities of district and county administrators of special education in coordinating the administration of the local plan.

(4) Multidistrict plans, submitted pursuant to subdivision (b) or (c) of Section 56195.1, shall identify the respective roles of the administrative unit and the administrator of the special education local plan area and the individual local education agencies within the special education local plan area in relation to the following:

(A) The hiring, supervision, evaluation, and discipline of the administrator of the special education local plan area and staff employed by the administrative unit in support of the local plan.

(B) The allocation from the state of federal and state funds to the special education local plan area administrative unit or to local education agencies within the special education local plan area.

(C) The operation of special education programs.

(D) Monitoring the appropriate use of federal, state, and local funds allocated for special education programs.

(E) The preparation of program and fiscal reports required of the special education local plan area by the state.

(5) The description of the governance and administration of the plan, and the policymaking process, shall be consistent with subdivision (f) of Section 56001, subdivision (a) of Section 56195.3, and Section 56195.9 and shall reflect a schedule of regular consultations regarding policy and budget development with representatives of special and regular teachers and administrators selected by the groups they represent and parent members of the community advisory committee established pursuant to Article 7 (commencing with Section 56190) of Chapter 2.

(c) A description of the method by which members of the public, including parents or guardians of individuals with exceptional needs

who are receiving services under the plan, may address questions or concerns to the governing body or individual identified in paragraph (1) of subdivision (b).

(d) A description of an alternative dispute resolution process, including mediation and final and binding arbitration to resolve disputes over the distribution of funding, the responsibility for service provision, and other activities specified within the plan. Any arbitration shall be conducted by the department.

(e) Copies of joint powers agreements or contractual agreements, as appropriate, for districts and counties that elect to enter into those agreements pursuant to subdivision (b) or (c) of Section 56195.1.

(f) An annual budget plan that shall be adopted at a public hearing held by the special education local plan area. Notice of this hearing shall be posted in each school in the local plan area at least 15 days prior to the hearing. The annual budget plan may be revised during any fiscal year according to the policymaking process established pursuant to paragraphs (3) and (5) of subdivision (b) and consistent with subdivision (f) of Section 56001 and Section 56195.9. The annual budget plan shall identify expected expenditures for all items required by this part which shall include, but not be limited to, the following:

(1) Funds received in accordance with Chapter 7.2 (commencing with Section 56836).

(2) Administrative costs of the plan.

(3) Special education services to pupils with severe disabilities and low incidence disabilities.

(4) Special education services to pupils with nonsevere disabilities.

(5) Supplemental aids and services to meet the individual needs of pupils placed in regular education classrooms and environments.

(6) Regionalized operations and services, and direct instructional support by program specialists in accordance with Article 6 (commencing with Section 56836.23) of Chapter 7.2.

(7) The use of property taxes allocated to the special education local plan area pursuant to Section 2572.

(g) An annual service plan shall be adopted at a public hearing held by the special education local plan area. Notice of this hearing shall be posted in each school in the special education local plan area at least 15 days prior to the hearing. The annual service plan may be revised during any fiscal year according to the policymaking process established pursuant to paragraphs (3) and (5) of subdivision (b) and consistent with subdivision (f) of Section 56001 and Section 56195.9. The annual service plan shall include a description of services to be provided by each district and county office, including the nature of the services and the location at which the services will be provided, including alternative schools, charter schools, opportunity schools and classes, community day schools operated by school districts, community schools operated by county offices of education, and

juvenile court schools regardless of whether the district or county office of education is participating in the local plan. This description shall demonstrate that all individuals with exceptional needs shall have access to services and instruction appropriate to meet their needs as specified in their individualized education programs.

(h) Verification that the plan has been reviewed by the community advisory committee and that the committee had at least 30 days to conduct this review prior to submission of the plan to the superintendent.

(i) A description of the identification, referral, assessment, instructional planning, implementation, and review in compliance with Chapter 4 (commencing with Section 56300).

(j) A description of the process being utilized to meet the requirements of Section 56303.

(k) A description of the process being utilized to meet the requirements of the California Early Intervention Services Act, Title 14 (commencing with Section 95000) of the Government Code.

(*l*) The local plan, budget plan, and annual service plan shall be written in language that is understandable to the general public.

(m) A description of the process being utilized to oversee and evaluate placements in nonpublic, nonsectarian schools and the method of ensuring that all requirements of each pupil's individualized education program are being met. The description shall include a method for evaluating whether the pupil is making appropriate educational progress.

SEC. 6. Section 56366 of the Education Code, as amended by Chapter 89 of the Statutes of 1998, 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 master contract for nonpublic, nonsectarian school or agency services shall be developed in accordance with the following provisions:

(1) The master 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. 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) (A) The master contract shall include an individual services agreement 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.

(B) The master contract shall include a description of the process being utilized by the school district, county office of education, or special education local plan area to oversee and evaluate placements in nonpublic, nonsectarian schools. This description shall include a method for evaluating whether the pupil is making appropriate educational progress.

(3) 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 master 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.

(4) The master 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.

(5) 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 or individualized services agreement.

(6) Related services provided pursuant to a nonpublic, nonsectarian agency master 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.

(7) 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.

(b) The master 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 tuition 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 master 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) No master 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 for a period no longer than four years from the date of the approval.

(e) By September 30, 1998, the procedures, methods, and regulations for the purposes of contracting for nonpublic, nonsectarian school and agency services pursuant to this section and for reimbursement pursuant to Sections 56836.16 and 56836.20 shall

be developed by the superintendent in consultation with statewide organizations representing providers of special education and designated instruction and services. The regulations shall be established by rules and regulations issued by the board.

SEC. 7. Section 56366.8 is added to the Education Code, to read:

56366.8. The State Department of Education, as a part of its certification process and complaint investigation process for nonpublic, nonsectarian schools or agencies shall do all of the following:

(a) Provide advance notice of certification reviews to the contracting district, special education local plan area, or county office, and to the nonpublic, nonsectarian school or agency under certification review.

(b) Provide advance notice of complaint investigations to the contracting district, special education local plan area, or county office of education.

(c) Include the contracting district, special education local plan area, or county office in certification reviews and complaint investigations.

(d) Transmit final reports of certification reviews and complaint investigations to districts, special education local plan areas, and county offices, placement agencies, and educational agencies that contract with the nonpublic, nonsectarian school or agency.

SEC. 8. The Legislature recommends that the Judicial Council adopt appropriate rules, standards, and forms regarding the educational placement of children who are placed in foster care that would do all of the following:

(a) Ensure that state courts routinely indicate the party that maintains or assumes the educational rights of a child placed in foster care to facilitate the prompt educational placement of the child.

(b) Ensure that, when ordering that a parent maintains educational authority for a child who is placed in foster care, the parent and the child are informed of both of the following:

(1) The parent's right to maintain educational authority for the child.

(2) The parent's right to designate another person or entity to maintain educational authority for the child.

(c) Ensure that state courts develop consistent policies regarding authorizing agencies that place children in foster care to receive the children's records.

SEC. 9. Section 7911 is added to the Family Code, to read:

7911. The Legislature finds and declares all of the following:

(a) The health and safety of California children placed by a county social services agency or probation department out of state pursuant to the provisions of the Interstate Compact on the Placement of Children are a matter of statewide concern.

(b) The Legislature therefore affirms its intention that the State Department of Social Services has full authority to require an

assessment and placement recommendation by a county multidisciplinary team prior to placement of a child in an out-of-state group home, to investigate allegations of child abuse or neglect of minors so placed, and to ensure that minors in out-of-state group homes meet all California group home licensing standards.

(c) This section is declaratory of existing law with respect to the Governor's designation of the State Department of Social Services to act as the compact administrator and of that department to act as the single state agency charged with supervision of public social services under Section 10600 of the Welfare and Institutions Code.

SEC. 10. Section 7911.1 is added to the Family Code, to read:

7911.1. (a) Notwithstanding any other provision of law, the State Department of Social Services or its designee shall investigate any threat to the health and safety of children placed by a California county social services agency or probation department in an out-of-state group home pursuant to the provisions of the Interstate Compact on the Placement of Children. This authority shall include the authority to interview children or staff in private or review their file at the out-of-state facility or wherever the child or files may be at the time of the investigation. Notwithstanding any other provisions of law, the State Department of Social Services or its designee shall require certified out-of-state group homes to comply with the reporting requirements applicable to group homes licensed in California pursuant to Title 22 of the California Code of Regulations for each child in care regardless of whether he or she is a California placement, by submitting a copy of the required reports to the Compact Administrator within regulatory timeframes. The Compact Administrator within one business day of receiving a serious events report shall verbally notify the appropriate placement agencies and within five working days of receiving a written report from the out-of-state group home, forward a copy of the written report to the appropriate placement agencies.

(b) Any contract, memorandum of understanding, or agreement entered into pursuant to paragraph (b) of Article 5 of the Interstate Compact on the Placement of Children regarding the placement of a child out of state by a California county social services agency or probation department shall include the language set forth in subdivision (b).

(c) The State Department of Social Services or its designee shall perform initial and continuing inspection of out-of-state group homes in order to either certify that the out-of-state group home meets all licensure standards required of group homes operated in California or that the department has granted a waiver to a specific licensing standard upon a finding that there exists no adverse impact to health and safety. Any failure by an out-of-state group home facility to make children or staff available as required by subdivision (a) for a private interview or make files available for review shall be grounds to deny or discontinue the certification. The State Department of Social

Services shall grant or deny an initial certification or a waiver under this subdivision to an out-of-state group home facility within 12 months of the effective date of this section. Certifications made pursuant to this subdivision shall be reviewed annually.

(d) Within six months of the effective date of this section, a county shall be required to obtain an assessment and placement recommendation by a county multidisciplinary team for each child in an out-of-state group home facility. On or after March 1, 1999, a county shall be required to obtain an assessment and placement recommendation by a county multidisciplinary team prior to placement of a child in an out-of-state group home facility.

(e) Any failure by an out-of-state group home to obtain or maintain its certification as required by subdivision (c) shall preclude the use of any public funds, whether county, state, or federal, in the payment for the placement of any child in that out-of-state group home, pursuant to the Interstate Compact on the Placement of Children.

(f) A multidisciplinary team shall consist of participating members from county social services, county mental health, county probation, county superintendents of schools, and other members as determined by the county.

(g) (1) The department may deny, suspend, or discontinue the certification of the out-of-state group home if the department makes a finding that the group home is not operating in compliance with the requirements of subdivision (c).

(2) Any judicial proceeding to contest the department's determination as to the status of the out-of-state group home certificate shall be held in California pursuant to Section 1085 of the Code of Civil Procedure.

(h) This section shall not impact placements made pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code relating to seriously emotionally disturbed children.

(i) Only an out-of-state group home authorized by the Compact Administrator to receive state funds for the placement by a county social services agency or probation department of any child in that out-of-state group home from the effective date of this section shall be eligible for public funds pending the department's certification under this section.

SEC. 11. Section 7912 is added to the Family Code, to read:

7912. (a) The Legislature finds and declares that the health and safety of children in out-of-state group home care pursuant to the Interstate Compact on the Placement of Children is a matter of statewide concern. The Legislature therefore affirms its intention that children placed by a county social services agency or probation department in out-of-state group homes be accorded the same personal rights and safeguards of a child placed in a California group home. This section is in clarification of existing law.

(b) The Compact Administrator may temporarily suspend any new placements in an out-of-state group home, for a period not to exceed 100 days, pending the completion of an investigation, pursuant to subdivision (a) of Section 7911.1, regarding a threat to the health and safety of children in care. During any suspension period the department or its designee shall have staff daily onsite at the out-of-state group home.

SEC. 12. Section 1520.1 is added to the Health and Safety Code, to read:

1520.1. In addition to Section 1520, applicants for a group home facility license shall meet the following requirements:

(a) (1) During the first 12 months of operation, the facility shall operate with a provisional license. After eight months of operation, the department shall conduct a comprehensive review of the facility for compliance with all applicable laws and regulations and help develop a plan of correction with the provisional licensee, if appropriate. By the end of the 12th month of operation, the department shall determine if the permanent license should be issued.

(2) If the department determines that the group home is in substantial compliance with licensing standards, notwithstanding Section 1525.5, the department may extend the provisional license for up to an additional six months for either of the following reasons:

(A) The group home requires additional time to be in full compliance with licensing standards.

(B) After 12 months of operation, the group home is not operating at 50 percent of its licensed capacity.

(3) By no later than the first business day of the 17th month of operation, the department shall conduct an additional review of a facility for which a provisional license is extended pursuant to paragraph (2), in order to determine whether a permanent license should be issued.

(4) The department may deny a group home license application at any time during the term of the provisional license to protect the health and safety of clients. If the department denies the application, the group home shall cease operation immediately. Continued operation of the facility after the department denies the application or the provisional license expires shall constitute unlicensed operation.

(5) When the department notifies a city or county planning authority pursuant to subdivision (c) of Section 1520.5, the department shall briefly describe the provisional licensing process and the timelines provided for under that process, as well as provide the name, address, and telephone number of the district office licensing the facility where a complaint or comment about the group home's operation may be filed.

(b) (1) After the production of the booklet provided for in paragraph (2), every member of the group home's board of directors

shall, prior to becoming a member of the board of directors sign a statement that the board member understands his or her legal duties and obligations as a member of the board of directors and that the group home's operation is governed by laws and regulations that are enforced by the department, as set forth in the booklet. The applicant, provisional licensee, and licensee shall have this statement available for inspection by the department. For members of the board of directors when the booklet is produced, the licensee shall obtain this statement by the next scheduled meeting of the board of directors. Compliance with this paragraph shall be a condition of licensure.

(2) No later than May 1, 1999, the department, in cooperation with the Department of Justice and in consultation with group home providers, shall develop and distribute to every group home provider detailed information designed to educate members of the group home provider's board of directors of their roles and responsibilities as board members of a public benefit corporation under the laws of this state. The information shall be included in a booklet, which shall include, but not be limited to, all of the following:

(A) The financial responsibilities of a member of the board of directors.

(B) Disclosure requirements for self-dealing transactions.

(C) Legal requirements pertaining to articles of incorporation, bylaws, length of board member terms, voting procedures, board meetings, quorums, minutes of board meetings, and, as provided for in subdivision (f), board member duties.

(D) A general overview of the laws and regulations governing the group home's operation that are enforced by the department.

(c) All financial records submitted by a facility to the department, or that are submitted as part of an audit of the facility, including, but not limited to, employee timecards and timesheets, shall be signed and dated by the employee and by the group home representative who is responsible for ensuring the accuracy of the information contained in the record, and shall contain an affirmative statement that the signatories understand that the information contained in the document is correct to the best of their knowledge and that submission of false or misleading information may be prosecuted as a crime.

(d) An applicant, provisional licensee, or licensee shall maintain, submit, and sign financial documents to verify the legitimacy and accuracy of these documents. These documents include, but are not limited to, the group home application, any financial documents and plans of corrections submitted to the department, and time sheets.

(e) (1) It is the intent of the Legislature that a group home have either representatives on its board of directors, as listed in paragraph (2), or a community advisory board, that meets at least annually.

(2) The representatives on the board of directors or the community advisory board members should consist of at least the following persons:

(A) A member of the facility's board of directors.

(B) Members of the community where the facility is located.

(C) Neighbors of the facility.

(D) Current or former clients of the facility.

(E) A representative from a local law enforcement or other city or county representative.

(f) Each group home provider shall schedule and conduct quarterly meetings of its board of directors. During these quarterly meetings, the board of directors shall review and discuss licensing reports, financial and program audit reports of its group home operations, special incident reports, and any administrative action against the licensee or its employees. The minutes shall reflect the board's discussion of these documents and the group home's operation. The licensee shall make available the minutes of group home board of directors meetings to the department.

SEC. 13. Section 1520.11 is added to the Health and Safety Code, to read:

1520.11. (a) A corporation that applies for licensure with the department shall list the facilities that any member of the board of directors, an executive director, or any officer has been licensed to operate, been employed in, or served as a member of the board of directors, the executive director, or an officer.

(b) The department shall not issue a provisional license or license to any corporate applicant that has a member of the board of directors, an executive director, or an officer, who is not eligible for licensure pursuant to Section 1520.3 or Section 1558.1.

(c) The department may revoke the license of any corporate licensee that has a member of the board of directors, an executive director, or an officer, who is not eligible for licensure pursuant to Section 1520.3 or Section 1558.1.

(d) Prior to instituting an administrative action pursuant to either subdivision (b) or (c), the department shall notify the applicant or licensee of the person's ineligibility to be a member of the board of directors, an executive director, or an officer of the applicant or licensee. The licensee shall remove the person from that position within 15 days or, if the person has client contact, he or she shall be removed immediately upon notification.

SEC. 14. Section 1522 of the Health and Safety Code is amended to read:

1522. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a community care facility, foster family home, or a certified family home. Therefore, the Legislature supports the use of the fingerprint

live-scan technology, as identified in the long-range plan of the Department of Justice for fully automating the processing of fingerprints and other data by the year 1999, otherwise known as the California Crime Information Intelligence System (CAL-CII), to be used for applicant fingerprints. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with community care clients may pose a risk to the clients' health and safety.

(a) Before issuing a license or special permit to any person or persons to operate or manage a community care facility, the State Department of Social Services shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated. That criminal history information shall include the full criminal record, of any of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code. No fee shall be charged by the Department of Justice or the State Department of Social Services for the fingerprinting of an applicant for a license or special permit to operate a facility providing nonmedical board, room, and care for six or less children or for obtaining a criminal record of the applicant pursuant to this section. The following shall apply to the criminal record information:

(1) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), has been convicted of a crime other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (g).

(2) If the State Department of Social Services finds that the applicant, or any person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services shall cease processing the application until the conclusion of the trial.

(3) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(4) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (g).

(5) An applicant and any other person specified in subdivision (b) shall submit a second set of fingerprints to the Department of Justice

for the purpose of searching the criminal records of the Federal Bureau of Investigation, in addition to the criminal records search required by this subdivision. If an applicant and persons listed in subdivision (b) meet all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and persons listed in subdivision (b), the department may issue a license if the applicant and each person described by subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1550. The department may also suspend the license pending an administrative hearing pursuant to Section 1550.5.

(b) In addition to the applicant, this section shall be applicable to criminal convictions of the following persons:

(1) Adults responsible for administration or direct supervision of staff.

(2) Any person, other than a client, residing in the facility.

(3) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene.

(4) (A) Any staff person, volunteer, or employee who has contact with the clients. A volunteer shall be exempt from the requirements of this subdivision if the volunteer is a relative of a client in care at the facility and is not used to replace or supplement staff in providing direct care and supervision of clients.

(B) A volunteer in an adult residential facility shall be exempt from the requirements of this subdivision if he or she is a relative, significant other, or close friend of a client receiving care in the facility and the volunteer is not used to replace or supplement staff in providing direct care and supervision of clients.

(5) Except for staff members of social rehabilitation facilities serving minors with alcohol or drug abuse problems, staff members of social rehabilitation facilities, other than those specified in paragraphs (1) and (2), are exempt from fingerprinting requirements.

(6) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity.

(7) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(c) (1) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a community care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit these fingerprints to the Department of Justice, along with a second set of fingerprints for the purpose of searching the records of the Federal Bureau of Investigation, or to comply with paragraph (1) of subdivision (h), prior to the person's employment, residence, or initial presence in the community care facility. These fingerprints shall be on a card provided by the State Department of Social Services for the purpose of obtaining a permanent set of fingerprints and shall be submitted to the Department of Justice by the licensee or sent by electronic transmission in a manner approved by the State Department of Social Services. A licensee's failure to submit fingerprints to the Department of Justice, or to comply with paragraph (1) of subdivision (h), as required in this section, shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation. The department may assess civil penalties for continued violations as permitted by Section 1548. The fingerprints shall then be submitted to the State Department of Social Services for processing. Upon request of the licensee, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprints.

(2) Within 14 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in subdivision (a). If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 14 calendar days of receipt of the fingerprints. Documentation of the individual's clearance or exemption shall be maintained by the licensee and be available for inspection. If new fingerprints are required for processing, the Department of Justice shall, within 14 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible. When live-scan technology is operational, as defined in Section 1522.04, the Department of Justice shall notify the department, as required by that section, and notify the licensee by mail within 14 days of electronic transmission of the fingerprints to the Department of Justice if the person has no criminal history recorded. A violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation. The department may assess civil penalties for continued violations as permitted by Section 1548.

(3) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of, or is awaiting trial for, a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a, or 273d or subdivision (a) or (b) of Section 368 of the Penal Code, or a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (g). If the conviction or arrest was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility; or (2) seek an exemption pursuant to subdivision (g). The State Department of Social Services shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered. A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by this paragraph shall be grounds for disciplining the licensee pursuant to Section 1550.

(4) The department may issue an exemption on its own motion pursuant to subdivision (g) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulation to establish the criteria to grant an exemption pursuant to this paragraph.

(5) Concurrently with notifying the licensee pursuant to paragraph (3), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (g). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (3).

(d) (1) Before issuing a license, special permit, or certificate of approval to any person or persons to operate or manage a foster family home or certified family home as described in Section 1506, the State Department of Social Services or other approving authority shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section

290 of the Penal Code or arrested for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated. That criminal history information shall include the full criminal record, if any, of those persons. No fee shall be charged by the Department of Justice or the State Department of Social Services for the fingerprinting of an applicant for a license, special permit, or certificate of approval described in this subdivision. The record, if any, shall be taken into consideration when evaluating a prospective applicant. The following shall apply to the criminal record information:

(A) If the applicant or other persons specified in subdivision (b) have convictions that would make the applicant's home unfit as a foster family home or a certified family home, the license, special permit, or certificate of approval shall be denied.

(B) If the State Department of Social Services finds that the applicant, or any person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services or other approving authority shall cease processing the application until the conclusion of the trial.

(C) For the purposes of this subdivision, a criminal record clearance provided under Section 8712 of the Family Code may be used by the department or other approving agency.

(D) An applicant for a foster family home license or to be certified as a family home, and any other person specified in subdivision (b), shall submit a second set of fingerprints to the Department of Justice for the purpose of searching the criminal records of the Federal Bureau of Investigation, in addition to the criminal records search required by subdivision (a). If an applicant meets all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and persons listed in subdivision (b), the department may issue a license, or the foster family agency may issue a certificate of approval, if the applicant and each person described by subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure or certification, the department determines that the licensee, certified foster parent, or person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1550 and the certificate of approval revoked pursuant to subdivision (b) of Section 1534. The department may also suspend the license pending an administrative hearing pursuant to Section 1550.5.

(2) Any person specified in this subdivision shall, as a part of the application, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions or arrests for any

crime against a child, for spousal or cohabitant abuse, or any crime for which the department cannot grant an exemption if the person was convicted and shall submit these fingerprints to the licensing agency or other approving authority.

(3) (A) The foster family agency shall obtain fingerprints from certified home applicants and from persons specified in subdivision (b) and shall submit them directly to the Department of Justice or send them by electronic transmission in a manner approved by the State Department of Social Services. A foster home licensee or foster family agency shall submit these fingerprints to the Department of Justice, along with a second set of fingerprints for the purpose of searching the records of the Federal Bureau of Investigation, or to comply with paragraph (1) of subdivision (h) prior to the person's employment, residence, or initial presence. A licensee's failure to submit fingerprints to the Department of Justice, or to comply with paragraph (1) of subdivision (h), as required in this section, shall result in the citation of a deficiency, and the immediate assessment of civil penalties of one hundred dollars ($100) per violation. The State Department of Social Services may assess civil penalties for continued violations, as permitted by Section 1548. The fingerprints shall then be submitted to the State Department of Social Services for processing.

(B) Upon request of the licensee, who shall enclose a self-addressed stamped envelop for this purpose, the Department of Justice shall verify receipt of fingerprints. Within five working days of the receipt of the criminal record or information regarding criminal convictions from the Department of Justice, the department shall notify the applicant of any criminal arrests or convictions. If no arrests or convictions are recorded, the Department of Justice shall provide the foster home licensee or the foster family agency with a statement of that fact concurrent with providing the information to the State Department of Social Services.

(4) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), has been convicted of a crime other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (g).

(5) If the State Department of Social Services finds after licensure or the granting of the certificate of approval that the licensee, certified foster parent, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license or certificate of approval may be revoked by the department or the foster family agency, whichever is applicable, unless the director grants an exemption pursuant to subdivision (g). A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by paragraph (3) of subdivision (c) shall be grounds for disciplining the licensee pursuant to Section 1550.

(e) The State Department of Social Services shall not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as necessary to the performance of its duties to inspect, license, and investigate community care facilities and individuals associated with a community care facility.

(f) (1) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which the State Department of Social Services is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(2) For purposes of this section or any other provision of this chapter, the department shall consider criminal convictions from another state or federal court as if the criminal offense was committed in this state.

(g) (1) After review of the record, the director may grant an exemption from disqualification for a license or special permit as specified in paragraphs (1) and (4) of subdivision (a), or for a license, special permit, or certificate of approval as specified in paragraphs (4) and (5) of subdivision (d), or for employment, residence, or presence in a community care facility as specified in paragraphs (2), (3), and (4) of subdivision (c), if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special

permit or granting an exemption for purposes of subdivision (c). Except as otherwise provided in this subdivision, no exemption shall be granted pursuant to this subdivision if the conviction was for an offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (a) of Section 290, or subdivision (a) or (b) of Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code. The director may grant an exemption if the employee or prospective employee, who was convicted of a crime against an individual prescribed in paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5 of the Penal Code, has been rehabilitated as provided in Section 4852.03 of the Penal Code, has maintained the conduct required in Section 4852.05 of the Penal Code for at least 10 years, and has the recommendation of the district attorney representing the employee's county of residence, or if the employee or prospective employee has received a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(2) The department shall not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1558.

(h) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal records clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another state licensing district office. The request shall be in writing to the department, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed stamped envelope for this purpose, the department shall verify whether the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal record clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal record clearance to be transferred.

(i) The full criminal record obtained for purposes of this section may be used by the department or by a licensed adoption agency as a clearance required for adoption purposes.

(j) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written

notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1558, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

(k) (1) The Department of Justice shall coordinate with the State Department of Social Services to establish and implement an automated live-scan processing system for fingerprints in the district offices of the Community Care Licensing Division of the State Department of Social Services by July 1, 1999. These live-scan processing units shall be connected to the main system at the Department of Justice by July 1, 1999, and shall become part of that department's pilot project in accordance with its long-range plan. The State Department of Social Services may charge a fee for the costs of processing a set of live-scan fingerprints.

(2) The Department of Justice shall provide a report to the Senate and Assembly fiscal committees, the Assembly Human Services Committee, and to the Senate Health and Human Services Committee by April 15, 1999, regarding the completion of backlogged criminal record clearance requests for all facilities licensed by the department and the progress on implementing the automated live-scan processing system in the district offices pursuant to paragraph (1).

(*l*) Amendments to the provisions of this section made in the 1998 calendar year shall be implemented commencing 60 days after the effective date of the act amending this section in the 1998 calendar year, except those provisions for the submission of fingerprints for searching the records of the Federal Bureau of Investigation, which shall be implemented commencing January 1, 1999.

SEC. 15. Section 1522.02 is added to the Health and Safety Code, to read:

1522.02. The department may adopt regulations to create substitute employee registries for persons working at more than one facility licensed pursuant to this chapter, Chapter 3.01 (commencing with Section 1568.01), Chapter 3.2 (commencing with Section 1569), Chapter 3.4 (commencing with Section 1569.70), Chapter 3.5 (commencing with Section 1596.90), or Chapter 3.6 (commencing with Section 1597.30), in order to permit these registries to submit fingerprint cards, and child abuse index information for child care registries so that these facilities have available cleared care staff.

SEC. 16. Section 1522.03 of the Health and Safety Code is amended to read:

1522.03. The Department of Justice may charge a fee sufficient to cover its cost in providing services in accordance with Section 1522 to comply with the 14-day requirement for provision to the department of the criminal record information, as contained in subdivision (c) of Section 1522.

SEC. 17. Section 1522.04 of the Health and Safety Code is amended to read:

1522.04. (a) The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a community care facility, or the other residential care facility, child day care facility, or foster family agency, licensed by the department pursuant to this chapter, Chapter 3.01 (commencing with Section 1568.01), Chapter 3.2 (commencing with Section 1569), Chapter 3.4 (commencing with Section 1596.70), Chapter 3.5 (commencing with Section 1596.90), or Chapter 3.6 (commencing with Section 1597.30), or certified family home. Therefore, the Legislature supports the use of the fingerprint live-scan technology, as identified in the long-range plan of the Department of Justice, for fully automating the processing of fingerprints and other data by the year 1999, otherwise known as the California Crime Information Intelligence System (CAL-CII) to be used for applicant fingerprints. Therefore, when live-scan technology is operational, individuals shall be required to obtain either a criminal record clearance from the Department of Justice or a criminal record exemption from the State Department of Social Services, before their initial presence in a community care facility. The regulations shall also cover the submission of fingerprint information to the Federal Bureau of Investigation.

(b) Upon implementation of an electronic fingerprinting system with terminals located statewide and managed by the Department of Justice, the Department of Justice shall ascertain the criminal history information required pursuant to subdivision (a) of Section 1522.04. If the Department of Justice cannot ascertain the information required pursuant to that subdivision within three working days, the Department of Justice shall notify the State Department of Social Services, or county licensing agencies, either by telephone and by subsequent confirmation in writing by first-class mail, or by electronic or facsimile transmission. At its discretion, the Department of Justice may forward one copy of the fingerprint cards to any other bureau of investigation it may deem necessary in order to verify any record of previous arrests or convictions of the fingerprinted individual.

(c) For purposes of this section, live-scan technology is operational when the Department of Justice and the district offices of the Community Care Licensing Division of the department live-scan sites are operational and the department is receiving 95 percent of its total responses indicating either no evidence of recorded criminal information or evidence of recorded criminal information, from the Department of Justice within three business days.

SEC. 18. Section 1522.1 of the Health and Safety Code is amended to read:

1522.1. Prior to granting a license to, or otherwise approving, any individual to care for children, the department shall check the Child Abuse Registry pursuant to paragraph (3) of subdivision (b) of Section 11170 of the Penal Code. The Department of Justice shall maintain and continually update an index of reports of child abuse by providers and shall inform the department of subsequent reports received from the child abuse index pursuant to Section 11170 of the Penal Code and the criminal history. The department shall investigate any reports received from the Child Abuse Registry. The investigation shall include, but not be limited to, the review of the investigation report and file prepared by the child protective agency which investigated the child abuse report. The department shall not deny a license based upon a report from the Child Abuse Registry unless child abuse is substantiated.

SEC. 19. Section 1522.4 of the Health and Safety Code is amended to read:

1522.4. (a) In addition to any other requirements of this chapter and except for foster family homes, small family homes, and certified family homes of foster family agencies, all of the following apply to any community care facility providing 24-hour care for children:

(1) The facility shall have one or more facility managers. "Facility manager," as used in this section, means a person on the premises with the authority and responsibility necessary to manage and control the day-to-day operation of a community care facility and supervise the clients. The facility manager, licensee, and administrator, or any combination thereof, may be the same person provided he or she meets all applicable requirements. If the administrator is also the facility manager for the same facility, this person shall be limited to the administration and management of only one facility.

(2) The facility manager shall have at least one year of experience working with the client group served, or equivalent education or experience, as determined by the department.

(3) A facility manager shall be at the facility at all times when one or more clients are present. To ensure adequate supervision of clients when clients are at the facility outside of their normal schedule, a current telephone number where the facility manager can be reached shall be provided to the clients, licensing agency, school, and any other agency or person as the department determines is necessary. The facility manager shall instruct these agencies and individuals to notify him or her when clients will be returning to the facility outside of the normal hours.

(4) The Legislature intends to upgrade the quality of care in licensed facilities. For the purposes of Sections 1533 and 1534, the licensed facility shall be inspected and evaluated for quality of care at least once each year, without advance notice and as often as necessary, without advance notice, to ensure the quality of care being provided.

Paragraphs (1), (2), and (3) shall apply only to new facilities licensed for six or fewer children which apply for a license after January 1, 1985, and all other new facilities licensed for seven or more children which apply for a license after January 1, 1988. Existing facilities licensed for seven or more children shall comply by January 1, 1989.

(b) No employee of the state or county employed in the administration of this chapter or employed in a position that is in any way concerned with facilities licensed under this chapter shall hold a license or have a direct or indirect financial interest in a facility described in subdivision (a).

The department, by regulation, shall make the determination pursuant to the purposes of this section and chapter, as to what employment is in the administration of this chapter or in any way concerned with facilities licensed under this chapter and what financial interest is direct or indirect.

This subdivision does not prohibit the state or county from securing a license for, or operating, a facility that is otherwise required to be licensed under this chapter.

(c) (1) No group home or foster family agency licensee, or employee, member of the board of directors, or officer of a group home or foster family agency licensee, shall offer gifts or other remuneration of any type to any employee of the State Department of Social Services or placement agency that exceeds the monetary limits for gifts to employees of the State of California pursuant to Title 9 (commencing with Section 81000) of the Government Code and regulations adopted thereunder by the Fair Political Practices Commission.

(2) No employee of the department or a placement agency shall accept any gift or other remuneration of any type from a group home or foster family agency licensee or employee, member of the board of directors, or officer of a group home or foster family agency licensee that exceeds the monetary limits for gifts to employees of the State of California in Title 9 (commencing with Section 81000) of the Government Code and regulations adopted thereunder by the Fair Political Practices Commission.

(3) Violation of this subdivision is punishable as a misdemeanor.

(4) The Legislature requests that the Judicial Council study whether the California Code of Judicial Ethics should be amended to further limit or bar gifts from group home facilities and foster family agencies to judicial officers and employees of the court and to report its findings to the Legislature by July 1, 1999.

SEC. 20. Section 1522.41 is added to the Health and Safety Code, to read:

1522.41. (a) The director, in consultation and collaboration with county placement officials, group home provider organizations, the Director of Mental Health and the Director of Developmental Services, shall develop and establish a certification program to ensure

that administrators of group home facilities have appropriate training to provide the care and services for which a license or certificate is issued.

(b) (1) In addition to any other requirements or qualifications required by the department, an administrator of a group home facility shall successfully complete a department approved certification program pursuant to subdivision (c) prior to employment. An administrator employed in a group home on the effective date of this section shall meet the requirements of paragraph (2) of subdivision (c).

(2) In those cases where the individual is both the licensee and the administrator of a facility, the individual shall comply with all of the licensee and administrator requirements of this section.

(3) Failure to comply with this section shall constitute cause for revocation of the license of the facility.

(4) The licensee shall notify the department within 10 days of any change in administrators.

(c) (1) The administrator certification programs shall require a minimum of 40 hours of classroom instruction that provides training on a uniform core of knowledge in each of the following areas:

(A) Laws, regulations, and policies and procedural standards that impact the operations of the type of facility for which the applicant will be an administrator.

(B) Business operations.

(C) Management and supervision of staff.

(D) Psychosocial and educational needs of the facility residents.

(E) Community and support services.

(F) Physical needs for facility residents.

(G) Administration, storage, misuse, and interaction of medication used by facility residents.

(H) Resident admission, retention, and assessment procedures.

(I) Nonviolent emergency intervention and reporting requirements.

(2) The department shall adopt separate program requirements for initial certification for persons who are employed as group home administrators on the effective date of this section. A person employed as an administrator of a group home facility on the effective date of this section, shall obtain a certificate by completing the training and testing requirements imposed by the department within 12 months of the effective date of the regulations implementing this section. After the effective date of this section, these administrators shall meet the requirements imposed by the department on all other group home administrators for certificate renewal.

(3) Individuals applying for certification under this section shall successfully complete an approved certification program, pass a written test administered by the department within 60 days of completing the program, and submit to the department the

documentation required by subdivision (d) within 30 days after being notified of having passed the test. The department may extend these time deadlines for good cause. The department shall notify the applicant of his or her test results within 30 days of administering the test.

(d) The department shall not begin the process of issuing a certificate until receipt of all of the following:

(1) A certificate of completion of the administrator training required pursuant to this chapter.

(2) The fee required for issuance of the certificate. A fee of one hundred dollars ($100) shall be charged by the department to cover the costs of processing the application for certification.

(3) Documentation from the applicant that he or she has passed the written test.

(4) Submission of fingerprints pursuant to Section 1522. The department may waive the submission for those persons who have a current clearance on file.

(5) That person is at least 21 years of age.

(e) It shall be unlawful for any person not certified under this section to hold himself or herself out as a certified administrator of a group home facility. Any person willfully making any false representation as being a certified administrator or facility manager is guilty of a misdemeanor.

(f) (1) Certificates issued under this section shall be renewed every two years and renewal shall be conditional upon the certificate holder submitting documentation of completion of 40 classroom hours of continuing education related to the core of knowledge specified in subdivision (c). For purposes of this section, an individual who is a group home facility administrator and who is required to complete the continuing education hours required by the regulations of the Department of Developmental Services, and approved by the regional center, may have up to 24 of the required continuing education course hours credited toward the 40-hour continuing education requirement of this section. Community college course hours approved by the regional centers shall be accepted by the department for certification.

(2) Every administrator of a group home facility shall complete the continuing education requirements of this subdivision.

(3) Certificates issued under this section shall expire every two years on the anniversary date of the initial issuance of the certificate, except that any administrator receiving his or her initial certification on or after July 1, 1999, shall make an irrevocable election to have his or her recertification date for any subsequent recertification either on the date two years from the date of issuance of the certificate or on the individual's birthday during the second calendar year following certification. The department shall send a renewal notice to the certificate holder 90 days prior to the expiration date of the certificate. If the certificate is not renewed prior to its expiration

date, reinstatement shall only be permitted after the certificate holder has paid a delinquency fee equal to three times the renewal fee and has provided evidence of completion of the continuing education required.

(4) To renew a certificate, the certificate holder shall, on or before the certificate expiration date, request renewal by submitting to the department documentation of completion of the required continuing education courses and pay the renewal fee of one hundred dollars ($100), irrespective of receipt of the department's notification of the renewal. A renewal request postmarked on or before the expiration of the certificate shall be proof of compliance with this paragraph.

(5) A suspended or revoked certificate shall be subject to expiration as provided for in this section. If reinstatement of the certificate is approved by the department, the certificate holder, as a condition precedent to reinstatement, shall submit proof of compliance with paragraphs (1) and (2) of subdivision (f), and shall pay a fee in an amount equal to the renewal fee, plus the delinquency fee, if any, accrued at the time of its revocation or suspension. Delinquency fees, if any, accrued subsequent to the time of its revocation or suspension and prior to an order for reinstatement, shall be waived for a period of 12 months to allow the individual sufficient time to complete the required continuing education units and to submit the required documentation. Individuals whose certificates will expire within 90 days after the order for reinstatement may be granted a three-month extension to renew their certificates during which time the delinquency fees shall not accrue.

(6) A certificate that is not renewed within four years after its expiration shall not be renewed, restored, reissued, or reinstated except upon completion of a certification training program, passing any test that may be required of an applicant for a new certificate at that time, and paying the appropriate fees provided for in this section.

(7) A fee of twenty-five dollars ($25) shall be charged for the reissuance of a lost certificate.

(8) A certificate holder shall inform the department of his or her employment status and change of mailing address within 30 days of any change.

(g) Unless otherwise ordered by the department, the certificate shall be considered forfeited under either of the following conditions:

(1) The department has revoked any license held by the administrator after the department issued the certificate.

(2) The department has issued an exclusion order against the administrator pursuant to Sections 1558, 1568.092, 1569.58, or 1596.8897, after the department issued the certificate, and the administrator did not appeal the exclusion order or, after the appeal,

the department issued a decision and order that upheld the exclusion order.

(h) (1) The department, in consultation and collaboration with county placement officials, provider organizations, the State Department of Mental Health, and the State Department of Developmental Services, shall establish, by regulation, the program content, the testing instrument, the process for approving certification training programs, and criteria to be used in authorizing individuals, organizations, or educational institutions to conduct certification training programs and continuing education courses. The department may also grant continuing education hours for continuing courses offered by accredited educational institutions that are consistent with the requirements in this section. The department may deny vendor approval to any agency or person in any of the following circumstances:

(A) The applicant has not provided the department with evidence satisfactory to the department of the ability of the applicant to satisfy the requirements of vendorization set out in the regulations adopted by the department pursuant to subdivision (j).

(B) The applicant person or agency has a conflict of interest in that the person or agency places its clients in group home facilities.

(C) The applicant public or private agency has a conflict of interest in that the agency is mandated to place clients in group homes and to pay directly for the services. The department may deny vendorization to this type of agency only as long as there are other vendor programs available to conduct the certification training programs and conduct education courses.

(2) The department may authorize vendors to conduct the administrator's certification training program pursuant to this section. The department shall conduct the written test pursuant to regulations adopted by the department.

(3) The department shall prepare and maintain an updated list of approved training vendors.

(4) The department may inspect certification training programs and continuing education courses to determine if content and teaching methods comply with regulations. If the department determines that any vendor is not complying with the requirements of this section, the department shall take appropriate action to bring the program into compliance, which may include removing the vendor from the approved list.

(5) The department shall establish reasonable procedures and timeframes not to exceed 30 days for the approval of vendor training programs.

(6) The department may charge a reasonable fee, not to exceed one hundred fifty dollars ($150) every two years, to certification program vendors for review and approval of the initial 40-hour training program pursuant to subdivision (c). The department may also charge the vendor a fee, not to exceed one hundred dollars

($100) every two years, for the review and approval of the continuing education courses needed for recertification pursuant to this subdivision.

(i) The department shall establish a registry for holders of certificates that shall include, at a minimum, information on employment status and criminal record clearance.

(j) Subdivisions (b) to (i), inclusive, shall be implemented upon regulations being adopted by the department, by January 1, 2000.

SEC. 21. Section 1522.42 is added to the Health and Safety Code, to read:

1522.42. (a) The department, in consultation and collaboration with county placement officials, provider organizations, the State Department of Mental Health, and the State Department of Developmental Services, shall adopt regulations that establish standardized training and continuing education curricula for facility managers and direct child care workers in group homes.

(b) The regulations required by subdivision (a) shall specify the date by which new and current employees shall be required to meet the standardized training and continuing education requirements. For persons employed as child care staff and facility managers on the effective date of the regulations, the department shall provide adequate time for these persons to comply with the regulatory requirements.

SEC. 22. Section 1522.43 is added to the Health and Safety Code, to read:

1522.43. (a) (1) For the duties the department imposes on a group home facility administrator in this chapter and in regulations adopted by the department, every group home shall state in its plan of operation, the number of hours per week that the administrator shall spend completing those duties and how the group home administrator shall accomplish those duties, including use of support personnel.

(2) For initial applicants, the information in paragraph (1) shall be contained in the plan of operation submitted to the department in the application.

(3) For current licensees, the licensee shall submit an amended plan of operation that contains the information required by paragraph (1) within six months of the effective date of this section. For changes in the group home administrator duties imposed by the department in this chapter or in regulations, a current licensee shall have six months after the effective date of those duties to submit an amended plan of operation to reflect the new administrator duties.

(b) (1) The department may review a group home's plan of operation to determine if the plan of operation is sufficient to ensure that the facility will operate in compliance with applicable licensing laws and regulations. As part of the review, the department may request that a peer review panel review the plan of operation.

(2) The peer review panel shall consist of two representatives from the department, a qualified group home administrator, an experienced group home provider, and a member or members from the placement agency or agencies that place children in group homes.

(c) A group home shall develop a daily schedule of activities for the children at the facility. The facility shall have this schedule available for inspection by the department. The activities in which the children are scheduled to participate shall be designed to meet the needs of the individual child, and shall be based on that child's needs and services plan.

SEC. 23. Section 1534 of the Health and Safety Code is amended to read:

1534. (a) (1) (A) Every licensed community care facility shall be periodically inspected and evaluated for quality of care by a representative or representatives designated by the director. Evaluations shall be conducted at least once per year and as often as necessary to ensure the quality of care being provided.

(B) In order to facilitate direct contact with group home clients, the department may interview children who are clients of group homes at any public agency or private agency at which the client may be found including, but not limited to, a juvenile hall, recreation or vocational program, or a nonpublic school. The department shall respect the rights of the child while conducting the interview, including informing the child that he or she has the right not to be interviewed and the right to have another adult present during the interview.

(2) The department shall notify the community care facility in writing of all deficiencies in its compliance with the provisions of this chapter and the rules and regulations adopted pursuant to this chapter, and shall set a reasonable length of time for compliance by the facility.

(3) Reports on the results of each inspection, evaluation, or consultation shall be kept on file in the department, and all inspection reports, consultation reports, lists of deficiencies, and plans of correction shall be open to public inspection in the county in which the facility is located.

(b) (1) Nothing in this section shall limit the authority of the department to inspect or evaluate a licensed foster family agency, a certified family home, or any aspect of a program where a licensed community care facility is certifying compliance with licensing requirements.

(2) Upon a finding of noncompliance by the department, the department may require a foster family agency to deny or revoke the certificate of approval of a certified family home, or take other action the department may deem necessary for the protection of a child placed with the family home. The family home shall be afforded the due process provided pursuant to this chapter.

(3) If the department requires a foster family agency to deny or revoke the certificate of approval, the department shall serve an order of denial or revocation upon the certified or prospective foster parent and foster family agency that shall notify the certified or prospective foster parent of the basis of the department's action and of the certified or prospective foster parent's right to a hearing.

(4) Within 15 days after the department serves an order of denial or revocation, the certified or prospective foster parent may file a written appeal of the department's decision with the department. The department's action shall be final if the certified or prospective foster parent does not file a written appeal within 15 days after the department serves the denial or revocation order.

(5) The department's order of the denial or revocation of the certificate of approval shall remain in effect until the hearing is completed and the director has made a final determination on the merits.

(6) A certified or prospective foster parent who files a written appeal of the department's order with the department pursuant to this section shall, as part of the written request, provide his or her current mailing address. The certified or prospective foster parent shall subsequently notify the department in writing of any change in mailing address, until the hearing process has been completed or terminated.

(7) Hearings held pursuant to this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code. In all proceedings conducted in accordance with this section the standard of proof shall be the preponderance of the evidence.

(8) The department may institute or continue a disciplinary proceeding against a certified or prospective foster parent upon any ground provided by this section, enter an order denying or revoking the certificate of approval, or otherwise take disciplinary action against the certified or prospective foster parent, notwithstanding any resignation, withdrawal of application, surrender of the certificate of approval, or denial or revocation of the certificate of approval by the foster family agency.

(9) A foster family agency's failure to comply with the department's order to deny or revoke the certificate of employment by placing or retaining children in care shall be grounds for disciplining the licensee pursuant to Section 1550.

SEC. 24. Section 1538 of the Health and Safety Code is amended to read:

1538. (a) Any person may request an inspection of any community care facility or certified family home in accordance with this chapter by transmitting to the state department notice of an alleged violation of applicable requirements prescribed by statutes or regulations of this state, including, but not limited to, a denial of access of any person authorized to enter the facility pursuant to

Section 9701 of the Welfare and Institutions Code. A complaint may be made either orally or in writing.

(b) The substance of the complaint shall be provided to the licensee or certified family home and foster family agency no earlier than at the time of the inspection. Unless the complainant specifically requests otherwise, neither the substance of the complaint provided the licensee or certified family home and foster family agency nor any copy of the complaint or any record published, released, or otherwise made available to the licensee or certified family home and foster family agency shall disclose the name of any person mentioned in the complaint except the name of any duly authorized officer, employee, or agent of the state department conducting the investigation or inspection pursuant to this chapter.

(c) Upon receipt of a complaint, other than a complaint alleging denial of a statutory right of access to a community care facility or certified family home, the state department shall make a preliminary review and, unless the state department determines that the complaint is willfully intended to harass a licensee or is without any reasonable basis, it shall make an onsite inspection of the community care facility or certified family home within 10 days after receiving the complaint, except where a visit would adversely affect the licensing investigation or the investigation of other agencies. In either event, the complainant shall be promptly informed of the state department's proposed course of action.

If the department determines that the complaint is intended to harass, is without a reasonable basis, or, after a site inspection, is unfounded, then the complaint and any documents related to it shall be marked confidential and shall not be disclosed to the public. If the complaint investigation included a site visit, the licensee or certified family home and foster family agency shall be notified in writing within 30 days of the dismissal that the complaint has been dismissed.

(d) Upon receipt of a complaint alleging denial of a statutory right of access to a community care facility or certified family home, the state department shall review the complaint. The complainant shall be notified promptly of the state department's proposed course of action.

(e) The department shall commence performance of complaint inspections of certified family homes upon the employment of sufficient personnel to carry out this function, and by no later than June 30, 1999. Upon implementation, the department shall notify all licensed foster family agencies.

SEC. 25. Section 1538.5 of the Health and Safety Code is amended to read:

1538.5. (a) (1) Not less than 30 days prior to the anniversary of the effective date of the license of any residential community care facility license, except licensed foster family homes, the department may transmit a copy to the board members of the licensed facility, parents, legal guardians, conservators, client's rights advocate, or

placement agency, as designated in each resident's placement agreement, of all inspection reports given to the facility by the department during the past year as a result of a substantiated complaint regarding a violation of this chapter relating to resident abuse and neglect, food, sanitation, incidental medical care, and residential supervision. During that one-year period the copy of the notices transmitted and the proof of the transmittal shall be open for public inspection.

(2) A group home facility shall maintain, at the facility, a copy of all licensing reports for the past three years that would be accessible to the public through the department, for inspection by placement officials, current and prospective facility clients, and these clients' family members who visit the facility.

(b) The facility operator, at the expense of the facility, shall transmit a copy of all substantiated complaints, by certified mail, to those persons described pursuant to paragraph (1) of subdivision (a) in the following cases:

(1) In the case of any substantiated complaint relating to resident physical or sexual abuse, the facility shall have three days, from the date the facility receives the licensing report from the state department to comply.

(2) In any case in which a facility has received three or more substantiated complaints relating to the same violation during the past 12 months, the facility shall have five days from the date the facility receives the licensing report to comply.

(c) Each residential facility shall retain a copy of the notices transmitted pursuant to subdivision (b) and proof of their transmittal by certified mail for a period of one year after their transmittal.

(d) If any residential facility to which this section applies fails to comply with the provisions of this section, as determined by the state department, the state department shall initiate civil penalty action against the facility in accordance with the provisions of Article 3 (commencing with Section 1530) and the related rules and regulations.

(e) The department shall notify the residential community care facility of its obligation when it is required to comply with this section.

SEC. 26. Section 1548 of the Health and Safety Code is amended to read:

1548. (a) In addition to suspension or revocation of a license issued under this chapter, the department may levy a civil penalty in addition to the penalties of suspension or revocation.

(b) The amount of the civil penalty shall not be less than twenty-five dollars ($25) or more than fifty dollars ($50) per day for each violation of this chapter except where the nature or seriousness of the violation or the frequency of the violation warrants a higher penalty or an immediate civil penalty assessment, or both, as determined by the department. In no event, shall a civil penalty assessment exceed one hundred fifty dollars ($150) per day.

(c) Notwithstanding Section 1534, any facility that is cited for repeating the same violation of this chapter within 12 months of the first violation is subject to an immediate civil penalty of one hundred fifty dollars ($150) and fifty dollars ($50) for each day the violation continues until the deficiency is corrected.

(d) Any facility that is assessed a civil penalty pursuant to subdivision (c) which repeats the same violation of this chapter within 12 months of the violation subject to subdivision (c) is subject to an immediate civil penalty of one hundred fifty dollars ($150) for each day the violation continues until the deficiency is corrected.

(e) The department shall adopt regulations implementing this section.

(f) As provided in Section 11466.31 of the Welfare and Institutions Code, the department may offset civil penalties owed by a group home against moneys to be paid by a county for the care of minors after the group home has exhausted its appeal of the civil penalty assessment. The department shall provide the group home a reasonable opportunity to pay the civil penalty before instituting the offset provision.

SEC. 27. Section 1550 of the Health and Safety Code is amended to read:

1550. The department may deny an application for, or suspend or revoke, any license, or any administrator certificate, issued under this chapter upon any of the following grounds and in the manner provided in this chapter:

(a) Violation by the licensee or holder of a special permit of this chapter or of the rules and regulations promulgated under this chapter.

(b) Aiding, abetting, or permitting the violation of this chapter or of the rules and regulations promulgated under this chapter.

(c) Conduct which is inimical to the health, morals, welfare, or safety of either an individual in, or receiving services from, the facility or the people of the State of California.

(d) The conviction of a licensee, or other person mentioned in Section 1522, at any time before or during licensure, of a crime as defined in Section 1522.

(e) The licensee of any facility or the person providing direct care or supervision knowingly allows any child to have illegal drugs or alcohol.

(f) Engaging in acts of financial malfeasance concerning the operation of a facility, including, but not limited to, improper use or embezzlement of client moneys and property or fraudulent appropriation for personal gain of facility moneys and property, or willful or negligent failure to provide services.

SEC. 28. Section 1558 of the Health and Safety Code is amended to read:

1558. (a) The department may prohibit any person from being a member of the board of directors, an executive director, or an

officer of a licensee, or a licensee from employing, or continuing the employment of, or allowing in a licensed facility, or allowing contact with clients of a licensed facility by, any employee, prospective employee, or person who is not a client who has:

(1) Violated, or aided or permitted the violation by any other person of, any provisions of this chapter or of any rules or regulations promulgated under this chapter.

(2) Engaged in conduct which is inimical to the health, morals, welfare, or safety of either an individual in or receiving services from the facility, or the people of the State of California.

(3) Been denied an exemption to work or to be present in a facility, when that person has been convicted of a crime as defined in Section 1522.

(4) Engaged in any other conduct which would constitute a basis for disciplining a licensee.

(5) Engaged in acts of financial malfeasance concerning the operation of a facility, including, but not limited to, improper use or embezzlement of client moneys and property or fraudulent appropriation for personal gain of facility moneys and property, or willful or negligent failure to provide services.

(b) The excluded person, the facility, and the licensee shall be given written notice of the basis of the department's action and of the excluded person's right to an appeal. The notice shall be served either by personal service or by registered mail. Within 15 days after the department serves the notice, the excluded person may file with the department a written appeal of the exclusion order. If the excluded person fails to file a written appeal within the prescribed time, the department's action shall be final.

(c) (1) The department may require the immediate removal of a member of the board of directors, an executive director, or an officer of a licensee or exclusion of an employee, prospective employee, or person who is not a client from a facility pending a final decision of the matter, when, in the opinion of the director, the action is necessary to protect residents or clients from physical or mental abuse, abandonment, or any other substantial threat to their health or safety.

(2) If the department requires the immediate removal of a member of the board of directors, an executive director, or an officer of a licensee or exclusion of an employee, prospective employee, or person who is not a client from a facility, the department shall serve an order of immediate exclusion upon the excluded person which shall notify the excluded person of the basis of the department's action and of the excluded person's right to a hearing.

(3) Within 15 days after the department serves an order of immediate exclusion, the excluded person may file a written appeal of the exclusion with the department. The department's action shall be final if the excluded person does not appeal the exclusion within

the prescribed time. The department shall do the following upon receipt of a written appeal:

(A) Within 30 days of receipt of the appeal, serve an accusation upon the excluded person.

(B) Within 60 days of receipt of a notice of defense pursuant to Section 11506 of the Government Code by the excluded person to conduct a hearing on the accusation.

(4) An order of immediate exclusion of the excluded person from the facility shall remain in effect until the hearing is completed and the director has made a final determination on the merits. However, the order of immediate exclusion shall be deemed vacated if the director fails to make a final determination on the merits within 60 days after the original hearing has been completed.

(d) An excluded person who files a written appeal with the department pursuant to this section shall, as part of the written request, provide his or her current mailing address. The excluded person shall subsequently notify the department in writing of any change in mailing address, until the hearing process has been completed or terminated.

(e) Hearings held pursuant to this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code. The standard of proof shall be the preponderance of the evidence and the burden of proof shall be on the department.

(f) The department may institute or continue a disciplinary proceeding against a member of the board of directors, an executive director, or an officer of a licensee or an employee, prospective employee, or person who is not a client upon any ground provided by this section, or enter an order prohibiting any person from being a member of the board of directors, an executive director, or an officer of a licensee or the excluded person's employment or presence in the facility or otherwise take disciplinary action against the excluded person, notwithstanding any resignation, withdrawal of employment application, or change of duties by the excluded person, or any discharge, failure to hire, or reassignment of the excluded person by the licensee or that the excluded person no longer has contact with clients at the facility.

(g) A licensee's failure to comply with the department's exclusion order after being notified of the order shall be grounds for disciplining the licensee pursuant to Section 1550.

(h) (1) (A) In cases where the excluded person appealed the exclusion order, the person shall be prohibited from working in any facility or being licensed to operate any facility licensed by the department or from being a certified foster parent for the remainder of the excluded person's life, unless otherwise ordered by the department.

(B) The excluded individual may petition for reinstatement one year after the effective date of the decision and order of the

department upholding the exclusion order pursuant to Section 11522 of the Government Code. The department shall provide the excluded person with a copy of Section 11522 of the Government Code with the decision and order.

(2) (A) In cases where the department informed the excluded person of his or her right to appeal the exclusion order and the excluded person did not appeal the exclusion order, the person shall be prohibited from working in any facility or being licensed to operate any facility licensed by the department or a certified foster parent for the remainder of the excluded person's life, unless otherwise ordered by the department.

(B) The excluded individual may petition for reinstatement after one year has elapsed from the date of the notification of the exclusion order pursuant to Section 11522 of the Government Code. The department shall provide the excluded person with a copy of Section 11522 of the Government Code with the exclusion order.

SEC. 29. Section 1558.1 of the Health and Safety Code is amended to read:

1558.1. (a) (1) If the department determines that a person was issued a license under this chapter or under Chapter 1 (commencing with Section 1200), Chapter 2 (commencing with Section 1250), Chapter 3.01 (commencing with Section 1568.01), Chapter 3.2 (commencing with Section 1569), Chapter 3.4 (commencing with Section 1596.70), Chapter 3.5 (commencing with Section 1596.90), or Chapter 3.6 (commencing with Section 1597.30) and the prior license was revoked within the preceding two years, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, an executive director, or an officer of a licensee of, any facility licensed by the department pursuant to the chapter.

(2) If the department determines that a person previously was issued a certificate of approval by a foster family agency which was revoked by the department pursuant to subdivision (b) of Section 1534 within the preceding two years, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, an executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter.

(b) If the department determines that the person had previously applied for a license under any of the chapters listed in paragraph (1) of subdivision (a) and the application was denied within the last year, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, an executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter and as follows:

(1) In cases where the applicant petitioned for a hearing, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, an executive

director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter until one year has elapsed from the effective date of the decision and order of the department upholding a denial.

(2) In cases where the department informed the applicant of his or her right to petition for a hearing and the applicant did not petition for a hearing, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, an executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

(c) If the department determines that the person had previously applied for a certificate of approval with a foster family agency and the department ordered the foster family agency to deny the application pursuant to subdivision (b) of Section 1534, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, an executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter and as follows:

(1) In cases where the applicant petitioned for a hearing, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, an executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter until one year has elapsed from the effective date of the decision and order of the department upholding a denial.

(2) In cases where the department informed the applicant of his or her right to petition for a hearing and the applicant did not petition for a hearing, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, an executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

(d) Exclusion or removal of an individual pursuant to this section shall not be considered an order of exclusion for purposes of Section 1558 or any other law.

(e) The department may determine not to exclude the person from, or remove the person from the position of a member of the board of directors, an executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter if it has determined that the reasons for the denial of the application or revocation of the facility license or certificate of approval were due to circumstances and conditions that either have been corrected or are no longer in existence.

SEC. 30. Section 1563 of the Health and Safety Code is amended to read:

1563. (a) The director shall ensure that licensing personnel at the department have appropriate training to properly carry out this chapter.

(b) The director shall institute a staff development and training program to develop among departmental staff the knowledge and understanding necessary to successfully carry out this chapter. Specifically, the program shall do all of the following:

(1) Provide staff with 36 hours of training per year that reflects the needs of persons served by community care facilities. This training shall, where appropriate, include specialized instruction in the needs of foster children, persons with mental disorders, or developmental or physical disabilities, or other groups served by specialized community care facilities.

(2) Give priority to applications for employment from persons with experience as care providers to persons served by community care facilities.

(3) Provide new staff with comprehensive training within the first six months of employment. This comprehensive training shall, at a minimum, include the following core areas: administrative action process, client populations, conducting facility visits, cultural awareness, documentation skills, facility operations, human relation skills, interviewing techniques, investigation processes, and regulation administration.

(c) In addition to the requirements in subdivision (b), group home and foster family agency licensing personnel shall receive a minimum of 24 hours of training per year to increase their understanding of children in group homes, certified homes, and foster family homes. The training shall cover, but not be limited to, all of the following topics:

(1) The types and characteristics of emotionally troubled children.

(2) The high-risk behaviors they exhibit.

(3) The biological, psychological, interpersonal, and social contributors to these behaviors.

(4) The range of management and treatment interventions utilized for these children, including, but not limited to, nonviolent, emergency intervention techniques.

SEC. 31. Section 1568.042 is added to the Health and Safety Code, to read:

1568.042. (a) A corporation that applies for licensure with the department shall list the facilities that any member of the board of directors, the executive director, or an officer has been licensed to operate, been employed in, or served as a member of the board of directors, the executive director, or an officer.

(b) The department shall not issue a provisional license or license to any corporate applicant that has a member of the board of directors, an executive director, or an officer who is not eligible for

licensure pursuant to subdivision (f) of Section 1568.065 and Section 1568.093.

(c) The department may revoke the license of any corporate licensee that has a member of the board of directors, an executive director, or an officer who is not eligible for licensure pursuant to subdivision (f) of Section 1568.065 and Section 1568.093.

(d) Prior to instituting an administrative action pursuant to either subdivision (b) or (c), the department shall notify the applicant or licensee of the person's ineligibility to be a member of the board of directors, an executive director, or an officer of the applicant or licensee, and shall give the applicant or licensee 15 days to remove the person from that position.

SEC. 32. Section 1568.082 of the Health and Safety Code is amended to read:

1568.082. (a) The department may suspend or revoke any license issued under this chapter upon any of the following grounds and in the manner provided in this chapter:

(1) Violation by the licensee of this chapter or of the rules and regulations adopted pursuant to this chapter.

(2) Aiding, abetting, or permitting the violation of this chapter or of the rules and regulations adopted pursuant to this chapter.

(3) Conduct which is inimical to the health, welfare, or safety of either an individual in or receiving services from the facility or the people of the State of California.

(4) The provision of services beyond the level the facility is authorized to provide, or accepting or retaining residents who require services of a higher level than the facility is authorized to provide.

(5) Engaging in acts of financial malfeasance concerning the operation of a facility, including, but not limited to, improper use or embezzlement of client moneys and property or fraudulent appropriation for personal gain of facility moneys and property, or willful or negligent failure to provide services.

(b) The director may temporarily suspend any license, prior to any hearing when, in the opinion of the director, the action is necessary to protect residents of the facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety. The director shall notify the licensee of the temporary suspension and the effective date of the temporary suspension, and at the same time shall serve the provider with an accusation. Upon receipt of a notice of defense to the accusation by the licensee, the director shall, within 15 days, set the matter for hearing, and the hearing shall be held as soon as possible, but not later than 30 days after receipt of the notice. The temporary suspension shall remain in effect until the time the hearing is completed and the director has made a final determination on the merits. However, the temporary suspension shall be deemed vacated if the director fails to make a

final determination on the merits within 30 days after the original hearing has been completed.

(c) In any case where the department orders the licensee to remove a resident who has a health condition or health conditions which cannot be cared for within the limits of the license or special permit or requires inpatient care in a health facility licensed pursuant to Chapter 2 (commencing with Section 1250), the licensee shall do all of the following:

(1) Prepare and submit to the department a written plan for relocation of the client or resident, in a form acceptable to the department.

(2) Comply with all terms and conditions of the approved relocation plan.

(3) Provide any other information as may be required by the department for the proper administration and enforcement of this section.

SEC. 33. Section 1568.09 of the Health and Safety Code is amended to read:

1568.09. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with residents of residential care facilities for persons with a chronic, life-threatening illness may pose a risk to the residents' health and safety.

Therefore, the Legislature supports the use of the fingerprint live-scan technology, as identified in the long-range plan of the Department of Justice for fully automating the processing of fingerprints and other data by the year 1999, otherwise known as the California Crime Information Intelligence System (CAL-CII), to be used for applicant fingerprints. It is the intent of the Legislature, in enacting this section, to require the fingerprints of those individuals whose contact with community care clients may pose a risk to the clients' health and safety.

(a) Before issuing a license to any person or persons to operate or manage a residential care facility, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated. That criminal history information shall include the full criminal record, if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code. The following shall apply to the criminal record information:

(1) If the State Department of Social Services finds that the applicant or any other person specified in subdivision (b) has been

convicted of a crime, other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (f).

(2) If the State Department of Social Services finds that the applicant, or any person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services shall cease processing the application until the conclusion of the trial.

(3) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(4) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (f).

(5) An applicant and any other person specified in subdivision (b) shall submit to the Department of Justice a second set of fingerprints for the purpose of searching the records of the Federal Bureau of Investigation, in addition to the search required by this subdivision. If an applicant meets all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and persons listed in subdivision (b), the department may issue a license if the applicant and each person described by subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to subdivision (a) of Section 1568.82. The department may also suspend the license pending an administrative hearing pursuant to subdivision (b) of Section 1568.82.

(b) In addition to the applicant, the provisions of this section shall be applicable to criminal convictions of the following persons:

(1) Adults responsible for administration or direct supervision of staff of the facility.

(2) Any person, other than a resident, residing in the facility.

(3) Any person who provides resident assistance in dressing, grooming, bathing, or personal hygiene.

(4) (A) Any staff person, volunteer, or employee who has contact with the residents.

(B) A volunteer shall be exempt from the requirements of this subdivision if he or she is a relative, significant other, or close friend of a client receiving care in the facility and the volunteer does not provide direct care and supervision of residents. A volunteer who provides direct care and supervision shall be exempt if the volunteer is a resident's spouse, significant other, close friend, or family

member and provides direct care and supervision to that resident only at the request of the resident.

(5) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in that capacity.

(6) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(c) (1) (A) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a residential care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit these fingerprints to the Department of Justice, along with a second set of fingerprints, for the purpose of searching the records of the Federal Bureau of Investigation, or to comply with paragraph (1) of subdivision (g), prior to the person's employment, residence, or initial presence in the residential care facility.

(B) These fingerprints shall be on a card provided by the State Department of Social Services for the purpose of obtaining a permanent set of fingerprints and submitted to the Department of Justice by the licensee or sent by electronic transmission in a manner approved by the State Department of Social Services. A licensee's failure to submit fingerprints to the Department of Justice, or to comply with paragraph (1) of subdivision (g), as required in this section, shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation. The State Department of Social Services may assess civil penalties for continued violations as allowed in Section 1568.0822. The fingerprints shall then be submitted to the State Department of Social Services for processing. The licensee shall maintain and make available for inspection documentation of the individual's clearance or exemption.

(2) (A) Paragraph (1) shall cease to be implemented when the State Department of Social Services adopts emergency regulations pursuant to Section 1522.04, and shall become inoperative when those regulations become final.

(B) A violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation. The department may assess civil penalties for continued violations as permitted by Section 1568.0822.

(3) Within 14 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in this

subdivision. If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 14 calendar days of receipt of the fingerprints. If new fingerprints are required for processing, the Department of Justice shall, within 14 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible. When live-scan technology is operational, as defined in Section 1522.04, the Department of Justice shall notify the department, as required by that section, and shall notify the licensee by mail within 14 days of electronic transmission of the fingerprints to the Department of Justice, if the person has no criminal history record.

(4) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, an offense specified in Section 243.4, 273a, or 273d, subdivision (a) or (b) of Section 368 of the Penal Code, or a felony, the department shall notify the licensee to act immediately to terminate the person's employment, remove the person from the residential care facility, or bar the person from entering the residential care facility. The department may subsequently grant an exemption pursuant to subdivision (f). If the conviction was for another crime, except a minor traffic violation, the licensee shall, upon notification by the department, act immediately to either (1) terminate the person's employment, remove the person from the residential care facility, or bar the person from entering the residential care facility; or (2) seek an exemption pursuant to subdivision (f). The department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered. A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by this paragraph shall be grounds for disciplining the licensee pursuant to Section 1568.082.

(5) The department may issue an exemption on its own motion pursuant to subdivision (f) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.

(6) Concurrently with notifying the licensee pursuant to paragraph (4), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (f). The individual may seek an exemption only if the licensee terminates the

person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (4).

(d) (1) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which the department is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of the sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting that person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(2) For purposes of this section or any other provision of this chapter, the department shall consider criminal convictions from another state or federal court as if the criminal offense was committed in this state.

(e) The State Department of Social Services shall not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as necessary to the performance of its duties to inspect, license, and investigate community care facilities and individuals associated with a community care facility.

(f) (1) After review of the record, the director may grant an exemption from disqualification for a license as specified in paragraphs (1) and (4) of subdivision (a), or for employment, residence, or presence in a residential care facility as specified in paragraphs (4), (5), and (6) of subdivision (c) if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption for purposes of

subdivision (c). However, no exemption shall be granted pursuant to this subdivision if the conviction was for an offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (a) of Section 290, or subdivision (a) or (b) of Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(2) The department shall not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1568.092.

(g) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal records clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another state licensing district office. The request shall be in writing to the department, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed stamped envelope for this purpose, the department shall verify whether the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal records clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal records clearance to be transferred.

(h) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1568.092, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

(i) (1) The Department of Justice shall charge a fee sufficient to cover its cost in providing services to comply with the 14-day requirement contained in subdivision (c) for provision to the department of criminal record information.

(2) Paragraph (1) shall cease to be implemented when the department adopts emergency regulations pursuant to Section 1522.04, and shall become inoperative when permanent regulations are adopted under that section.

(j) Amendments to the provisions of this section made in the 1998 calendar year shall be implemented commencing 60 days after the

effective date of the act amending this section in the 1998 calendar year, except those provisions for the submission of fingerprints for searching the records of the Federal Bureau of Investigation, which shall be implemented commencing January 1, 1999.

SEC. 34. Section 1568.092 of the Health and Safety Code is amended to read:

1568.092. (a) The department may prohibit any person from being a member of the board of directors, an executive director, or an officer of a licensee or a licensee from employing, or continuing the employment of, or allowing in a licensed facility, or allowing contact with clients of a licensed facility by, any employee, prospective employee, or person who is not a client who has:

(1) Violated, aided, or permitted the violation by any other person of this chapter or of any rules or regulations adopted under this chapter.

(2) Engaged in conduct which is inimical to the health, welfare, or safety of either an individual, in or receiving services from the facility, or the people of the State of California.

(3) Been denied an exemption to work or to be present in a facility, when that person has been convicted of a crime as defined in Section 1568.09.

(4) Engaged in any other conduct which would constitute a basis for disciplining a licensee.

(5) Engaging in acts of financial malfeasance concerning the operation of a facility, including, but not limited to, improper use or embezzlement of client moneys and property or fraudulent appropriation for personal gain of facility moneys and property, or willful or negligent failure to provide services.

(b) The excluded person, the facility, and the licensee shall be given written notice of the basis of the action of the department and of the right to an appeal of the excluded person. The notice shall be served either by personal service or by registered mail. Within 15 days after the department serves the notice, the excluded person may file with the department a written appeal of the exclusion order. If the excluded person fails to file a written appeal within the prescribed time, the action of the department shall be final.

(c) (1) The department may require the immediate removal of an executive director, a board member, or an officer of a licensee or exclusion of an employee, prospective employee, or person who is not a client from a facility pending a final decision of the matter when, in the opinion of the director, the action is necessary to protect residents or clients from physical or mental abuse, abandonment, or any other substantial threat to their health or safety.

(2) If the department requires the immediate removal of a member of the board of directors, an executive director, or an officer of a licensee or exclusion of an employee, prospective employee, or person who is not a client from a facility, the department shall serve an order of immediate exclusion upon the excluded person which

shall notify the excluded person of the basis of the department's action and of the excluded person's right to a hearing.

(3) Within 15 days after the department serves an order of immediate exclusion, the excluded person may file a written appeal of the exclusion with the department. The department's action shall be final if the excluded person does not appeal the exclusion within the prescribed time. The department shall do the following upon receipt of a written appeal:

(A) Within 30 days of receipt of the appeal, serve an accusation upon the excluded person.

(B) Within 60 days of receipt of a notice of defense by the excluded person pursuant to Section 11506 of the Government Code, conduct a hearing on the accusation.

(4) An order of immediate exclusion of the excluded person from the facility shall remain in effect until the hearing is completed and the director has made a final determination on the merits. However, the order of immediate exclusion shall be deemed vacated if the director fails to make a final determination on the merits within 60 days after the original hearing has been completed.

(d) An excluded person who files a written appeal of the exclusion order with the department pursuant to this section shall, as part of the written request, provide his or her current mailing address. The excluded person shall subsequently notify the department in writing of any change in mailing address, until the hearing process has been completed or terminated.

(e) Hearings held pursuant to this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code. The standard of proof shall be the preponderance of the evidence and the burden of proof shall be on the department.

(f) The department may institute or continue a disciplinary proceeding against a member of the board of directors, an executive director, or an officer of a licensee or an employee, prospective employee, or person who is not a client upon any ground provided by this section, or enter an order prohibiting any person from being a member of the board of directors, an executive director, or an officer of a licensee or the excluded person's employment or presence in the facility or otherwise take disciplinary action against the excluded person, notwithstanding any resignation, withdrawal of employment application or change of duties by the excluded person, or any discharge, failure to hire or reassignment of the excluded person by the licensee or that the excluded person no longer has contact with clients at the facility.

(g) A licensee's failure to comply with the department's exclusion order after being notified of the order shall be grounds for disciplining the licensee pursuant to Section 1568.082.

(h) (1) (A) In cases where the excluded person appealed the exclusion order and there is a decision and order of the department

upholding the exclusion order, the person shall be prohibited from working in any facility or being licensed to operate any facility licensed by the department or from being a certified foster parent for the remainder of the excluded person's life, unless otherwise ordered by the department.

(B) The excluded individual may petition for reinstatement one year after the effective date of the decision and order of the department upholding the exclusion order pursuant to Section 11522 of the Government Code. The department shall provide the excluded person with a copy of Section 11522 of the Government Code with the decision and order.

(2) (A) In cases where the department informed the excluded person of his or her right to appeal the exclusion order and the excluded person did not appeal the exclusion order, the person shall be prohibited from working in any facility or being licensed to operate any facility licensed by the department or a certified foster parent for the remainder of the excluded person's life, unless otherwise ordered by the department.

(B) The excluded individual may petition for reinstatement after one year has elapsed from the date of the notification of the exclusion order pursuant to Section 11522 of the Government Code. The department shall provide the excluded person with a copy of Section 11522 of the Government Code with the exclusion order.

SEC. 35. Section 1568.093 of the Health and Safety Code is amended to read:

1568.093. (a) (1) If the department determines that a person was issued a license under this chapter or under Chapter 1 (commencing with Section 1200), Chapter 2 (commencing with Section 1250), Chapter 3.01 (commencing with Section 1568.01), Chapter 3.2 (commencing with Section 1569), Chapter 3.4 (commencing with Section 1596.70), Chapter 3.5 (commencing with Section 1596.90), or Chapter 3.6 (commencing with Section 1597.30) and the prior license was revoked within the preceding two years, the department shall exclude the person from, and remove him or her as, a member of the board of directors, an executive director, or an officer of a licensee of, any facility licensed by the department pursuant to the chapter.

(2) If the department determines that a person previously was issued a certificate of approval by a foster family agency which was revoked by the department pursuant to subdivision (b) of Section 1534 within the preceding two years, the department shall exclude the person from, and remove him or her as, a member of the board of directors, an executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter.

(b) If the department determines that the person had previously applied for a license under any of the chapters listed in paragraph (1) of subdivision (a) and the application was denied within the last year, the department shall exclude the person from, and remove him or

her as, a member of the board of directors, an executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter and as follows:

(1) In cases where the applicant petitioned for a hearing, the department shall exclude the person from, and remove him or her as, a member of the board of directors, an executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter until one year has elapsed from the effective date of the decision and order of the department upholding a denial.

(2) In cases where the department informed the applicant of his or her right to petition for a hearing and the applicant did not petition for a hearing, the department shall exclude the person from, and remove him or her as, a member of the board of directors, an executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

(c) If the department determines that the person had previously applied for a certificate of approval with a foster family agency and the department ordered the foster family agency to deny the application pursuant to subdivision (b) of Section 1534, the department shall exclude the person from, and remove him or her as, a member of the board of directors, an executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter and as follows:

(1) In cases where the applicant petitioned for a hearing, the department shall exclude the person from, and remove him or her as, a member of the board of directors, an executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter until one year has elapsed from the effective date of the decision and order of the department upholding a denial.

(2) In cases where the department informed the applicant of his or her right to petition for a hearing and the applicant did not petition for a hearing, the department shall exclude the person from, and remove him or her as, a member of the board of directors, an executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

(d) Exclusion or removal of an individual pursuant to this section shall not be considered an order of exclusion for purposes of Section 1568.092 or any other law.

(e) The department may determine not to exclude the person from, and remove from being a member of the board of directors, an executive director, or officer of a licensee of, any facility licensed by the department pursuant to this chapter if it has determined that the reasons for the denial of the application or revocation of the facility license or certificate of approval were due to circumstances and

conditions that either have been corrected or are no longer in existence.

SEC. 36. Section 1569.1515 is added to the Health and Safety Code, to read:

1569.1515. (a) A corporation that applies for licensure with the department shall list the facilities that any member of the board of directors, the executive director, or an officer has been licensed to operate, been employed in, or served as a member of the board of directors, the executive director, or an officer.

(b) The department shall not issue a provisional license or license to any corporate applicant that has a member of the board of directors, the executive director, or an officer who is not eligible for licensure pursuant to Sections 1569.16 and 1569.59.

(c) The department may revoke the license of any corporate licensee that has a member of the board of directors, the executive director, or an officer who is not eligible for licensure pursuant to Sections 1569.16 and 1569.59.

(d) Prior to instituting an administrative action pursuant to either subdivision (b) or (c), the department shall notify the applicant or licensee of the person's ineligibility to be a member of the board of directors, an executive director, or an officer of the applicant or licensee, and shall give the applicant or licensee 15 days to remove the person from that position.

SEC. 37. Section 1569.17 of the Health and Safety Code is amended to read:

1569.17. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a residential care facility for the elderly. The Legislature supports the use of the fingerprint live-scan technology, as identified in the long-range plan of the Department of Justice for fully automating the processing of fingerprints and other data by the year 1999. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with clients of residential care facilities for the elderly may pose a risk to the clients' health and safety.

(a) Before issuing a license to any person or persons to operate or manage a residential care facility for the elderly, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has been exonerated. That criminal history

information shall include the full criminal record, if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code. The following shall apply to the criminal record information:

(1) If the State Department of Social Services finds that the applicant or any other person specified in subdivision (b) has been convicted of a crime, other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (f).

(2) If the State Department of Social Services finds that the applicant, or any person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services shall cease processing the application until the conclusion of the trial.

(3) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(4) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (f).

(5) An applicant and any person specified in subdivision (b) shall submit a second set of fingerprints to the Department of Justice, for the purpose of searching the records of the Federal Bureau of Investigation, in addition to the search required by subdivision (a). If an applicant meets all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and persons listed in subdivision (b), the department may issue a license if the applicant and each person described by subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1569.50. The department may also suspend the license pending an administrative hearing pursuant to Sections 1569.50 and 1569.51.

(b) In addition to the applicant, the provisions of this section shall be applicable to criminal convictions of the following persons:

(1) Adults responsible for administration or direct supervision of staff.

(2) Any person, other than a client, residing in the facility.

(3) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene.

(4) (A) Any staff person, volunteer, or employee who has frequent and routine contact with the clients.

(B) A volunteer shall be exempt from the requirements of this subdivision if he or she is a relative, significant other, or close friend of a client receiving care in the facility and the volunteer is not used to replace or supplement staff in providing direct care and supervision of clients.

(5) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity.

(6) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(c) (1) (A) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a residential facility for the elderly, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit these fingerprints, along with a second set of fingerprints for the purpose of searching the records of the Federal Bureau of Investigation, to the Department of Justice, or to comply with paragraph (1) of subdivision (g) prior to the person's employment, residence, or initial presence in the residential care facility for the elderly.

(B) These fingerprints shall be on a card provided by the State Department of Social Services for the purpose of obtaining a permanent set of fingerprints and submitted to the Department of Justice by the licensee or sent by electronic transmission in a manner approved by the State Department of Social Services. A licensee's failure to submit fingerprints to the Department of Justice, or to comply with paragraph (1) of subdivision (g), as required in this section, shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation. The State Department of Social Services may assess civil penalties for continued violations as permitted by Section 1569.49. The fingerprints shall then be submitted to the State Department of Social Services for processing. Documentation of the individual's clearance or exemption shall be maintained by the licensee and be available for inspection. When live-scan technology is operational, as defined in Section 1522.04, the Department of Justice shall notify the department, as required by that section, and notify the licensee by mail within 14 days of electronic transmission of the fingerprints to the Department of Justice, if the person has no criminal record. A violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation. The department may assess

civil penalties for continued violations as permitted by Section 1569.49.

(2) Within 14 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in this subdivision. If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 14 calendar days of receipt of the fingerprints. If new fingerprints are required for processing, the Department of Justice shall, within 14 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible.

(3) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, an offense specified in Section 243.4, 273a, or 273d, subdivision (a) or (b) of Section 368 of the Penal Code, or a felony, the State Department of Social Services shall notify the licensee in writing within 15 calendar days of the receipt of the notification from the Department of Justice to act immediately to terminate the person's employment, remove the person from the residential care facility for the elderly, or bar the person from entering the residential care facility for the elderly. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (f). If the conviction was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the residential care facility for the elderly, or bar the person from entering the residential care facility for the elderly; or (2) seek an exemption pursuant to subdivision (f). The department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered by the department. A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by this paragraph shall be grounds for disciplining the licensee pursuant to Section 1569.50.

(4) The department may issue an exemption on its own motion pursuant to subdivision (f) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.

(5) Concurrently with notifying the licensee pursuant to paragraph (4), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (f). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (4).

(d) (1) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the department is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of the sentence, notwithstanding a subsequent order pursuant to the provisions of Sections 1203.4 and 1203.4a of the Penal Code permitting a person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice or documents admissible in a criminal action pursuant to Section 969b of the Penal Code shall be prima facie evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(2) For purposes of this section or any other provision of this chapter, the department shall consider criminal convictions from another state or federal court as if the criminal offense was committed in this state.

(e) The State Department of Social Services shall not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as necessary to the performance of its duties to inspect, license, and investigate community care facilities and individuals associated with a community care facility.

(f) (1) After review of the record, the director may grant an exemption from disqualification for a license as specified in paragraphs (1) and (4) of subdivision (a), or for employment, residence, or presence in a residential care facility for the elderly as specified in paragraphs (4), (5), and (6) of subdivision (c) if the

director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). However, no exemption shall be granted pursuant to this subdivision if the conviction was for an offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (a) of Section 290, or subdivision (a) or (b) of Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code. The director shall notify in writing the licensee or the applicant of his or her decision within 60 days of receipt of all information from the applicant and other sources determined necessary by the director for the rendering of a decision pursuant to this subdivision.

(2) The department shall not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1569.58.

(g) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal records clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another state licensing district office. The request shall be submitted, in writing to the department, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed stamped envelope for this purpose, the department shall verify whether the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal records clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal records clearances to be transferred under this section.

(h) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1569.58, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

(i) Amendments to the provisions of this section made in the 1998 calendar year shall be implemented commencing 60 days after the

effective date of the act amending this section in the 1998 calendar year, except those provisions for the submission of fingerprints for searching the records of the Federal Bureau of Investigation, which shall be implemented commencing January 1, 1999.

SEC. 38. Section 1569.172 of the Health and Safety Code is amended to read:

1569.172. The Department of Justice may charge a fee sufficient to cover its cost in providing services in accordance with Section 1569.17 to comply with the 14-day requirement for provision to the department of the criminal record information, as contained in subdivision (c) of Section 1569.17.

SEC. 39. Section 1569.50 of the Health and Safety Code is amended to read:

1569.50. The department may deny an application for a license or may suspend or revoke any license issued under this chapter upon any of the following grounds and in the manner provided in this chapter:

(a) Violation by the licensee of this chapter or of the rules and regulations adopted under this chapter.

(b) Aiding, abetting, or permitting the violation of this chapter or of the rules and regulations adopted under this chapter.

(c) Conduct which is inimical to the health, morals, welfare, or safety of either an individual in or receiving services from the facility or the people of the State of California.

(d) The conviction of a licensee, or other person mentioned in Section 1569.17 at any time before or during licensure, of a crime as defined in Section 1569.17.

(e) Engaging in acts of financial malfeasance concerning the operation of a facility, including, but not limited to, improper use or embezzlement of client moneys and property or fraudulent appropriation for personal gain of facility moneys and property, or willful or negligent failure to provide services for the care of clients.

The director may temporarily suspend any license, prior to any hearing when, in the opinion of the director, the action is necessary to protect residents or clients of the facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety. The director shall notify the licensee of the temporary suspension and the effective date of the temporary suspension and at the same time shall serve the provider with an accusation. Upon receipt of a notice of defense to the accusation by the licensee, the director shall, within 15 days, set the matter for hearing, and the hearing shall be held as soon as possible but not later than 30 days after receipt of the notice. The temporary suspension shall remain in effect until the time the hearing is completed and the director has made a final determination on the merits. However, the temporary suspension shall be deemed vacated if the director fails to make a final determination on the merits within 30 days after the original hearing has been completed.

SEC. 40. Section 1569.58 of the Health and Safety Code is amended to read:

1569.58. (a) The department may prohibit any person from being a member of the board of directors, an executive director, a board member, or an officer of a licensee, or a licensee from employing, or continuing the employment of, or allowing in a licensed facility, or allowing contact with clients of a licensed facility by, any employee, prospective employee, or person who is not a client who has:

(1) Violated, or aided or permitted the violation by any other person of, any provisions of this chapter or of any rules or regulations promulgated under this chapter.

(2) Engaged in conduct which is inimical to the health, morals, welfare, or safety of either an individual in or receiving services from the facility, or the people of the State of California.

(3) Been denied an exemption to work or to be present in a facility, when that person has been convicted of a crime as defined in Section 1569.17.

(4) Engaged in any other conduct which would constitute a basis for disciplining a licensee.

(5) Engaging in acts of financial malfeasance concerning the operation of a facility, including, but not limited to, improper use or embezzlement of client moneys and property or fraudulent appropriation for personal gain of facility moneys and property, or willful or negligent failure to provide services for the care of clients.

(b) The excluded person, the facility, and the licensee shall be given written notice of the basis of the department's action and of the excluded person's right to an appeal. The notice shall be served either by personal service or by registered mail. Within 15 days after the department serves the notice, the excluded person may file with the department a written appeal of the exclusion order. If the excluded person fails to file a written appeal within the prescribed time, the department's action shall be final.

(c) (1) The department may require the immediate removal of a member of the board of directors, an executive director, or an officer of a licensee or exclusion of an employee, prospective employee, or person who is not a client from a facility pending a final decision of the matter, when, in the opinion of the director, the action is necessary to protect residents or clients from physical or mental abuse, abandonment, or any other substantial threat to their health or safety.

(2) If the department requires the immediate removal of a member of the board of directors, an executive director, or an officer of a licensee or exclusion of an employee, prospective employee, or person who is not a client from a facility the department shall serve an order of immediate exclusion upon the excluded person which shall notify the excluded person of the basis of the department's action and of the excluded person's right to a hearing.

(3) Within 15 days after the department serves an order of immediate exclusion, the excluded person may file a written appeal of the exclusion with the department. The department's action shall be final if the excluded person does not appeal the exclusion within the prescribed time. The department shall do the following upon receipt of a written appeal:

(A) Within 30 days of receipt of the appeal, serve an accusation upon the excluded person.

(B) Within 60 days of receipt of a notice of defense by the excluded person pursuant to Section 11506 of the Government Code, conduct a hearing on the accusation.

(4) An order of immediate exclusion of the excluded person from the facility shall remain in effect until the hearing is completed and the director has made a final determination on the merits. However, the order of immediate exclusion shall be deemed vacated if the director fails to make a final determination on the merits within 60 days after the original hearing has been completed.

(d) An excluded person who files a written appeal of the exclusion order with the department pursuant to this section shall, as part of the written request, provide his or her current mailing address. The excluded person shall subsequently notify the department in writing of any change in mailing address, until the hearing process has been completed or terminated.

(e) Hearings held pursuant to this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code. The standard of proof shall be the preponderance of the evidence and the burden of proof shall be on the department.

(f) The department may institute or continue a disciplinary proceeding against a member of the board of directors, an executive director, or an officer of a licensee or an employee, prospective employee, or person who is not a client upon any ground provided by this section, or enter an order prohibiting any person from being a member of the board of directors, an executive director, or an officer of a licensee, or the excluded person's employment or presence in the facility or otherwise take disciplinary action against the excluded person, notwithstanding any resignation, withdrawal of employment application or change of duties by the excluded person, or any discharge, failure to hire or reassignment of the excluded person by the licensee or that the excluded person no longer has contact with clients at the facility.

(g) A licensee's failure to comply with the department's exclusion order after being notified of the order shall be grounds for disciplining the licensee pursuant to Section 1569.50.

(h) (1) (A) In cases where the excluded person appealed the exclusion order and there is a decision and order of the department upholding the exclusion order, the person shall be prohibited from working in any facility or being licensed to operate any facility

licensed by the department or from being a certified foster parent for the remainder of the excluded person's life, unless otherwise ordered by the department.

(B) The excluded individual may petition for reinstatement one year after the effective date of the decision and order of the department upholding the exclusion order pursuant to Section 11522 of the Government Code. The department shall provide the excluded person with a copy of Section 11522 of the Government Code with the decision and order.

(2) (A) In cases where the department informed the excluded person of his or her right to appeal the exclusion order and the excluded person did not appeal the exclusion order, the person shall be prohibited from working in any facility or being licensed to operate any facility licensed by the department or a certified foster parent for the remainder of the excluded person's life, unless otherwise ordered by the department.

(B) The excluded individual may petition for reinstatement after one year has elapsed from the date of the notification of the exclusion order pursuant to Section 11522 of the Government Code. The department shall provide the excluded person with a copy of Section 11522 of the Government Code with the exclusion order.

SEC. 41. Section 1569.59 of the Health and Safety Code is amended to read:

1569.59. (a) (1) If the department determines that a person was issued a license under this chapter or under Chapter 1 (commencing with Section 1200), Chapter 2 (commencing with Section 1250), Chapter 3.01 (commencing with Section 1568.01), Chapter 3.2 (commencing with Section 1569), Chapter 3.4 (commencing with Section 1596.70), Chapter 3.5 (commencing with Section 1596.90), or Chapter 3.6 (commencing with Section 1597.30) and the prior license was revoked within the preceding two years, the department shall exclude the person from, and remove him or her from the position of, a member of the board of directors, an executive director, or an officer of a licensee of, any facility licensed by the department pursuant to the chapter.

(2) If the department determines that a person previously was issued a certificate of approval by a foster family agency which was revoked by the department pursuant to subdivision (b) of Section 1534 within the preceding two years, the department shall exclude the person from, and remove him or her from the position of, a member of the board of directors, an executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter.

(b) If the department determines that the person had previously applied for a license under any of the chapters listed in paragraph (1) of subdivision (a) and the application was denied within the last year, the department shall exclude the person from, and remove him or her from the position of, a member of the board of directors, an

executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter and as follows:

(1) In cases where the applicant petitioned for a hearing, the department shall exclude the person from, and remove him or her from the position of, a member of the board of directors, an executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter until one year has elapsed from the effective date of the decision and order of the department upholding a denial.

(2) In cases where the department informed the applicant of his or her right to petition for a hearing and the applicant did not petition for a hearing, the department shall exclude the person from, and remove him or her from the position of, a member of the board of directors, an executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

(c) If the department determines that the person had previously applied for a certificate of approval with a foster family agency and the department ordered the foster family agency to deny the application pursuant to subdivision (b) of Section 1534, the department shall exclude the person from, and remove him or her from the position of, a member of the board of directors, an executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter and as follows:

(1) In cases where the applicant petitioned for a hearing, the department shall exclude the person from, and remove him or her from the position of, a member of the board of directors, an executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter until one year has elapsed from the effective date of the decision and order of the department upholding a denial.

(2) In cases where the department informed the applicant of his or her right to petition for a hearing and the applicant did not petition for a hearing, the department shall exclude the person from, and remove him or her from the position of, a member of the board of directors, an executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

(d) Exclusion or removal of an individual pursuant to this section shall not be considered an order of exclusion for purposes of Section 1569.58 or any other law.

(e) The department may determine not to exclude a person from, and remove him or her from the position of, a member of the board of directors, an executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter if it has been determined that the reasons for the denial of the application or

revocation of the facility license or certificate of approval were due to circumstances or conditions that either have been corrected or are no longer in existence.

SEC. 42. Section 1569.617 of the Health and Safety Code is amended to read:

1569.617. (a) (1) There is hereby created in the State Treasury, the Certification Fund from which moneys, upon appropriation of the Legislature, shall be expended by the department for the purpose of administering the residential care facilities for the elderly certification program provided under Sections 1569.23, 1569.615, and 1569.616, the adult residential facilities certification program pursuant to Section 1562.3, and the group home facilities certification program pursuant to Section 1522.41.

(2) All money contained in the Residential Care Facility for the Elderly Fund on the operative date of this paragraph shall be retained in the Certification Fund for appropriation for the purposes specified in paragraph (1).

(b) The fund shall consist of specific appropriations that the Legislature sets aside for use by the fund and all fees, penalties, and fines collected pursuant to Sections 1522.41, 1562.3, 1562.23, 1569.615, and 1569.616.

(c) For the 1998–99 fiscal year, the sum of not to exceed two hundred fifty thousand dollars ($250,000) from the Certification Fund shall be appropriated to the State Department of Social Services to administer the group home facilities certification program pursuant to Section 1522.41. The department shall repay the appropriation made for the 1998–99 fiscal year into the Certification Fund upon receipt of fees pursuant to Section 1522.41.

SEC. 43. Section 1596.603 of the Health and Safety Code is amended to read:

1596.603. (a) Each person initiating a background examination to be a trustline provider shall either obtain two sets of fingerprints from a law enforcement agency or other local agency on a fingerprint card authorized by the Department of Justice and shall submit the fingerprints, or send his or her fingerprints to the Department of Justice by electronic transmission in a manner approved by the department, unless exempted in subdivision (e), and a completed trustline application to the department, or the local child care resource and referral agency which will immediately forward the application package to the department. The agency taking the fingerprints shall inscribe the serial number from the identification card described in Section 1596.601 on the fingerprint cards.

(b) A law enforcement agency or other local agency authorized to take fingerprints may charge a reasonable fee to offset the costs of fingerprinting for the purposes of this chapter.

(c) Upon receipt, the department shall transmit the fingerprint card and a copy of the application to the Department of Justice. The Department of Justice shall use the fingerprints and the application

to search the state and Federal Bureau of Investigation criminal history information pursuant to Section 1596.871 and the automated child abuse system pursuant to subdivision (b) of Section 1596.877.

(d) A person who is a current licensee or employee in a facility licensed by the department need not submit fingerprints to the department and may transfer their criminal record clearance pursuant to subdivision (h) of Section 1596.871. The person shall instead submit to the department, along with the person's application, a copy of the person's identification card described in Section 1596.601 and sign a declaration verifying the person's identity. A willful false declaration is a violation of this subdivision punishable in the same manner as provided under Section 1596.890.

SEC. 44. Section 1596.871 of the Health and Safety Code is amended to read:

1596.871. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a child care center or family child care home. Therefore, the Legislature supports the use of the fingerprint live-scan technology, as defined in the long-range plan of the Department of Justice for fully automating the processing of fingerprints and other data by the year 1999, otherwise known as the California Crime Information Intelligence System (CAL-CII), to be used for applicant fingerprints. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with child day care facility clients may pose a risk to the children's health and safety.

(a) Before issuing a license or special permit to any person to operate or manage a day care facility, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated. That criminal history information shall include the full criminal record, if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code. No fee shall be charged by the Department of Justice or the department for the fingerprinting of an applicant who will serve six or fewer children or any family day care applicant for a license, or for obtaining a criminal record of an applicant pursuant to this section. The following shall apply to the criminal record information:

(1) If the State Department of Social Services finds that the applicant or any other person specified in subdivision (b) has been convicted of a crime, other than a minor traffic violation, the

application shall be denied, unless the director grants an exemption pursuant to subdivision (f).

(2) If the State Department of Social Services finds that the applicant, or any person specified in subdivision (b), is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services shall cease processing the application until the conclusion of the trial.

(3) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(4) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (f).

(5) An applicant and any person specified in subdivision (b) shall submit a second set of fingerprints to the Department of Justice, for the purpose of searching the records of the Federal Bureau of Investigation, in addition to the search required by subdivision (a). If an applicant meets all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and persons listed in subdivision (b), the department may issue a license if the applicant and each person described by subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1596.885. The department may also suspend the license pending an administrative hearing pursuant to Section 1596.886.

(b) In addition to the applicant, this section shall be applicable to criminal convictions of the following persons:

(1) Adults responsible for administration or direct supervision of staff.

(2) Any person, other than a child, residing in the facility.

(3) Any person who provides care and supervision to the children.

(4) Any staff person, volunteer, or employee who has contact with the children. A volunteer shall be exempt from the requirements of this subdivision if the volunteer is a relative of a client in care at the facility and is not used to replace or supplement staff in providing direct care and supervision of children in care.

(5) If the applicant is a firm, partnership, association, or corporation, the chief executive officer, other person serving in like capacity, or a person designated by the chief executive officer as responsible for the operation of the facility, as designated by the applicant agency.

(6) If the applicant is a local educational agency, the president of the governing board, the school district superintendent, or a person designated to administer the operation of the facility, as designated by the local educational agency.

(7) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(8) This section does not apply to employees of child care and development programs under contract with the State Department of Education who have completed a criminal records clearance as part of an application to the Commission on Teacher Credentialing, and who possess a current credential or permit issued by the commission, including employees of child care and development programs that serve both children subsidized under, and children not subsidized under, a State Department of Education contract. The Commission on Teacher Credentialing shall notify the department upon revocation of a current credential or permit issued to an employee of a child care and development program under contract with the State Department of Education.

(9) This section does not apply to employees of a child care and development program operated by a school district, county office of education, or community college district under contract with the State Department of Education who have completed a criminal records clearance as a condition of employment. The school district, county office of education, or community college district upon receiving information that the status of an employee's criminal record clearance has changed shall submit that information to the department.

(c) (1) (A) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a child day care facility be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal conviction. The licensee shall submit these fingerprints to the Department of Justice, along with a second set of fingerprints for the purpose of searching the records of the Federal Bureau of Investigation, or to comply with paragraph (1) of subdivision (h), prior to the person's employment, residence, or initial presence in the child day care facility.

(B) These fingerprints shall be on a card provided by the State Department of Social Services for the purpose of obtaining a permanent set of fingerprints and submitted to the Department of Justice by the licensee or sent by electronic transmission in a manner approved by the State Department of Social Services. A licensee's failure to submit fingerprints to the Department of Justice, or to comply with paragraph (1) of subdivision (h), as required in this

section, shall result in the citation of a deficiency, and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation. The State Department of Social Services may assess civil penalties for continued violations permitted by Section 1596.99 and Section 1597.62. The fingerprints shall then be submitted to the State Department of Social Services for processing. Within 14 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided in this subdivision. If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 14 calendar days of receipt of the fingerprints. If new fingerprints are required for processing, the Department of Justice shall, within 14 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible.

(C) Documentation of the individual's clearance or exemption shall be maintained by the licensee, and shall be available for inspection. When live-scan technology is operational, as defined in Section 1522.04, the Department of Justice shall notify the department, as required by that section, and notify the licensee by mail within 14 days of electronic transmission of the fingerprints to the Department of Justice, if the person has no criminal record. Any violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation. The department may assess civil penalties for continued violations, as permitted by Sections 1596.99 and 1597.62.

(2) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the department, on the basis of fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, an offense specified in Section 243.4, 273a, or 273d, subdivision (a) or (b) of Section 368 of the Penal Code, or a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the child day care facility, or bar the person from entering the child day care facility. The department may subsequently grant an exemption pursuant to subdivision (f). If the conviction was for another crime except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the child day care facility, or bar the person from entering the child day care facility; or (2) seek an exemption pursuant to subdivision (f). The department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered.

A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by this paragraph shall be grounds for disciplining the licensee pursuant to Section 1596.885 or 1596.886.

(3) The department may issue an exemption on its own motion pursuant to subdivision (f) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.

(4) Concurrently with notifying the licensee pursuant to paragraph (3), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (f). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (3).

(d) (1) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which the department is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(2) For purposes of this section or any other provision of this chapter, the department shall consider criminal convictions from another state or federal court as if the criminal offense was committed in this state.

(e) The State Department of Social Services shall not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety

of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as necessary to the performance of its duties to inspect, license, and investigate community care facilities and individuals associated with a community care facility.

(f) (1) After review of the record, the director may grant an exemption from disqualification for a license or special permit as specified in paragraphs (1) and (4) of subdivision (a), or for employment, residence, or presence in a child day care facility as specified in paragraphs (3), (4), and (5) of subdivision (c) if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of good character so as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). However, no exemption shall be granted pursuant to this subdivision if the conviction was for an offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (a) of Section 290, or subdivision (a) or (b) of Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(2) The department shall not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1596.8897.

(g) Upon request of the licensee, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprints.

(h) (1) For the purposes of compliance with this section, the department may permit an individual to transfer a current criminal records clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another state licensing district office. The request shall be in writing to the department, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed stamped envelope for this purpose, the department shall verify whether the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal records clearances in its active files for a minimum of two years after

an employee is no longer employed at a licensed facility in order for the criminal records clearances to be transferred.

(i) Amendments to this section made in the 1998 calendar year shall be implemented commencing 60 days after the effective date of the act amending this section in the 1998 calendar year, except those provisions for the submission of fingerprints for searching the records of the Federal Bureau of Investigation, which shall be implemented commencing January 1, 1999.

SEC. 45. Section 1596.8713 of the Health and Safety Code is amended to read:

1596.8713. The Department of Justice may charge a fee sufficient to cover its costs in providing services in accordance with Section 1596.871 to comply with the 14-day requirement for provision to the department of the criminal record information, as contained in subdivision (c) of Section 1569.871.

SEC. 46. Section 1596.877 of the Health and Safety Code is amended to read:

1596.877. (a) Prior to granting a license to, or otherwise approving, any family day care home, the department shall check the child abuse and neglect complaint records of the child protective services agency of the county in which the applicant has resided for the two years preceding the application.

(b) Prior to granting a license to or otherwise approving any individual to care for children in either a family day care home or a day care center, the department shall check the Child Abuse Registry pursuant to paragraph (3) of subdivision (b) of Section 11170 of the Penal Code. The Department of Justice shall maintain and continually update an index of reports of child abuse by providers and shall inform the department of subsequent reports received from the child abuse index pursuant to Section 11170 of the Penal Code and the criminal history.

(c) The department shall investigate any reports received from the Child Abuse Registry and investigate any information received from the county child protective services agency. However, child protective services agency information arising from a report designated as "unfounded," as defined pursuant to subdivision (a) of Section 11165.12 of the Penal Code, shall not be included in the investigation. The investigation shall include, but not be limited to, the review of the investigation report and file prepared by the child protective services agency that investigated the child abuse report. The department shall not deny a license based upon a report from the Child Abuse Registry or based on child abuse and neglect complaint records of the county child protective services agency unless child abuse is substantiated.

(d) On and after January 1, 1993, the department shall implement this section for records maintained by counties that have automated their child abuse and neglect complaint records on or before January

1, 1993. On and after July 1, 1993, the department shall implement this section for records maintained by all counties.

SEC. 47. Section 1596.885 of the Health and Safety Code is amended to read:

1596.885. The department may deny an application for or suspend or revoke any license, registration, or special permit issued under this act upon any of the following grounds and in the manner provided in this act:

(a) Violation by the licensee, registrant, or holder of a special permit of this act or of the rules and regulations promulgated under this act.

(b) Aiding, abetting, or permitting the violating of this act or of the rules and regulations promulgated under this act.

(c) Conduct which is inimical to the health, morals, welfare, or safety of either an individual in or receiving services from the facility or the people of this state.

(d) The conviction of a licensee, or other person specified in Section 1596.871, at any time before or during licensure, of a crime as defined in Section 1596.871.

(e) Engaging in acts of financial malfeasance concerning the operation of a facility, including, but not limited to, improper use or embezzlement of client moneys and property or fraudulent appropriation for personal gain of facility moneys and property, or willful or negligent failure to provide services for the care of clients.

SEC. 48. Section 1596.8897 of the Health and Safety Code is amended to read:

1596.8897. (a) The department may prohibit any person from being a member of the board of directors, an executive director, or an officer of a licensee or a licensee from employing, or continuing the employment of, or allowing in a licensed facility, or allowing contact with clients of a licensed facility by, any employee, prospective employee, or person who is not a client who has:

(1) Violated, or aided or permitted the violation by any other person of, any provisions of this chapter or of any rules or regulations promulgated under this chapter.

(2) Engaged in conduct which is inimical to the health, morals, welfare, or safety of either an individual in or receiving services from the facility, or the people of the State of California.

(3) Been denied an exemption to work or to be present in a facility, when that person has been convicted of a crime as defined in Section 1596.871.

(4) Engaged in any other conduct which would constitute a basis for disciplining a licensee.

(5) Engaging in acts of financial malfeasance concerning the operation of a facility, including, but not limited to, improper use or embezzlement of client moneys and property or fraudulent appropriation for personal gain of facility moneys and property, or willful or negligent failure to provide services for the care of clients.

(b) The excluded person, the facility, and the licensee shall be given written notice of the basis of the department's action and of the excluded person's right to an appeal. The notice shall be served either by personal service or by registered mail. Within 15 days after the department serves the notice, the excluded person may file with the department a written appeal of the exclusion order. If the excluded person fails to file a written appeal within the prescribed time, the department's action shall be final.

(c) (1) The department may require the immediate removal of a member of the board of directors, an executive director, or an officer of a licensee or exclusion of an employee, prospective employee, or person who is not a client from a facility pending a final decision of the matter, when, in the opinion of the director, the action is necessary to protect residents or clients from physical or mental abuse, abandonment, or any other substantial threat to their health or safety.

(2) If the department requires the immediate removal of a member of the board of directors, an executive director, or an officer of a licensee or exclusion of an employee, prospective employee, or person who is not a client from a facility, the department shall serve an order of immediate exclusion upon the excluded person which shall notify the excluded person of the basis of the department's action and of the excluded person's right to a hearing.

(3) Within 15 days after the department serves an order of immediate exclusion, the excluded person may file a written appeal of the exclusion with the department. The department's action shall be final if the excluded person does not appeal the exclusion within the prescribed time. The department shall do the following upon receipt of a written appeal:

(A) Within 30 days of receipt of the appeal, serve an accusation upon the excluded person.

(B) Within 60 days of receipt of a notice of defense by the employee or prospective employee pursuant to Section 11506 of the Government Code, conduct a hearing on the accusation.

(4) An order of immediate exclusion of the excluded person from the facility shall remain in effect until the hearing is completed and the director has made a final determination on the merits. However, the order of immediate exclusion shall be deemed vacated if the director fails to make a final determination on the merits within 60 days after the original hearing has been completed.

(d) An excluded person who files a appeal of the exclusion order with the department pursuant to this section shall, as part of the written request, provide his or her current mailing address. The excluded person shall subsequently notify the department in writing of any change in mailing address, until the hearing process has been completed or terminated.

(e) Hearings held pursuant to this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of

Division 3 of Title 2 of the Government Code. The standard of proof shall be the preponderance of the evidence and the burden of proof shall be on the department.

(f) The department may institute or continue a disciplinary proceeding against a member of the board of directors, an executive director, or an officer of a licensee or an employee, prospective employee, or person who is not a client upon any ground provided by this section, or enter an order prohibiting any person from being a member of the board of directors, the executive director, or an officer of a licensee or the excluded person's employment or presence in the facility or otherwise take disciplinary action against the excluded person, notwithstanding any resignation, withdrawal of employment application or change of duties by the excluded person, or any discharge, failure to hire or reassignment of the excluded person by the licensee or that the excluded person no longer has contact with clients at the facility.

(g) A licensee's failure to comply with the department's exclusion order after being notified of the order shall be grounds for disciplining the licensee pursuant to Section 1596.885 or 1596.886.

(h) (1) (A) In cases where the excluded person appealed the exclusion order and there is a decision and order upholding the exclusion order, the person shall be prohibited from working in any facility or being licensed to operate any facility licensed by the department or from being a certified foster parent for the remainder of the excluded person's life, unless otherwise ordered by the department.

(B) The excluded individual may petition for reinstatement one year after the effective date of the decision and order of the department upholding the exclusion order pursuant to Section 11522 of the Government Code. The department shall provide the excluded person with a copy of Section 11522 of the Government Code with the decision and order.

(2) (A) In cases where the department informed the excluded person of his or her right to appeal the exclusion order and the excluded person did not appeal the exclusion order, the person shall be prohibited from working in any facility or being licensed to operate any facility licensed by the department or a certified foster parent for the remainder of the excluded person's life, unless otherwise ordered by the department.

(B) The excluded individual may petition for reinstatement after one year has elapsed from the date of the notification of the exclusion order pursuant to Section 11522 of the Government Code. The department shall provide the excluded person with a copy of Section 11522 of the Government Code with the exclusion order.

SEC. 49. Section 1596.8898 of the Health and Safety Code is amended to read:

1596.8898. (a) (1) If the department determines that a person was issued a license under this chapter or under Chapter 1

(commencing with Section 1200), Chapter 2 (commencing with Section 1250), Chapter 3.01 (commencing with Section 1568.01), Chapter 3.2 (commencing with Section 1569), Chapter 3.4 (commencing with Section 1596.70), Chapter 3.5 (commencing with Section 1596.90), or Chapter 3.6 (commencing with Section 1597.30) and the prior license was revoked within the preceding two years, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, the executive director, or an officer of a licensee of, any facility licensed by the department pursuant to the chapter.

(2) If the department determines that a person previously was issued a certificate of approval by a foster family agency which was revoked by the department pursuant to subdivision (b) of Section 1534 within the preceding two years, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, the executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter.

(b) If the department determines that the person had previously applied for a license under any of the chapters listed in paragraph (1) of subdivision (a) and the application was denied within the last year, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, the executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter and as follows:

(1) In cases where the applicant petitioned for a hearing, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, the executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter until one year has elapsed from the effective date of the decision and order of the department upholding a denial.

(2) In cases where the department informed the applicant of his or her right to petition for a hearing and the applicant did not petition for a hearing, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, the executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

(c) If the department determines that the person had previously applied for a certificate of approval with a foster family agency and the department ordered the foster family agency to deny the application pursuant to subdivision (b) of Section 1534, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, the executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter and as follows:

(1) In cases where the applicant petitioned for a hearing, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, the executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter until one year has elapsed from the effective date of the decision and order of the department upholding a denial.

(2) In cases where the department informed the applicant of his or her right to petition for a hearing and the applicant did not petition for a hearing, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, the executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

(d) Exclusion or removal of an individual pursuant to this section shall not be considered an order of exclusion for purposes of Section 1598.8897 or any other law.

(e) The department may determine not to exclude a person from, or remove him or her from the position of, a member of the board of directors, the executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter if it has been determined that the reasons for the denial of the application or revocation of the facility license or certificate of approval were due to circumstances or conditions that either have been corrected or are no longer in existence.

SEC. 50. Section 1596.952 is added to the Health and Safety Code, to read:

1596.952. (a) A corporation that applies for licensure with the department shall list the facilities that any member of the board of directors, the executive director, or an officer that has been licensed to operate, been employed in or served as a member of the board of directors, the executive director, or an officer.

(b) The department shall not issue a provisional license or license to any corporate applicant that has a member of the board of directors, the executive director, or an officer who is not eligible for licensure pursuant to Sections 1596.851 and 1596.8898.

(c) The department may revoke the license of any corporate licensee that has a member of the board of directors, the executive director, or an officer who is not eligible for licensure pursuant to Sections 1596.851 and 1596.8898.

(d) Prior to instituting an administrative action pursuant to subdivision (b) or (c), the department shall notify the applicant or licensee of the person's ineligibility to be a member of the board of directors, an executive director, or an officer of the applicant or licensee. The licensee has 15 days to remove the person from that position if the person does not have client contact, or immediately upon notification if the person has client contact.

SEC. 51. Section 11174.3 of the Penal Code is amended to read:

11174.3. (a) Whenever a representative of a child protective agency or the State Department of Social Services deems it necessary, a suspected victim of child abuse may be interviewed during school hours, on school premises, concerning a report of suspected child abuse that occurred within the child's home or out-of-home care facility. The child shall be afforded the option of being interviewed in private or selecting any adult who is a member of the staff of the school, including any certificated or classified employee or volunteer aide, to be present at the interview. A representative of the child protective agency or the State Department of Social Services shall inform the child of that right prior to the interview.

The purpose of the staff person's presence at the interview is to lend support to the child and enable him or her to be as comfortable as possible. However, the member of the staff so elected shall not participate in the interview. The member of the staff so present shall not discuss the facts or circumstances of the case with the child. The member of the staff so present, including, but not limited to, a volunteer aide, is subject to the confidentiality requirements of this article, a violation of which is punishable as specified in Section 11167.5. A representative of the school shall inform a member of the staff so selected by a child of the requirements of this section prior to the interview. A staff member selected by a child may decline the request to be present at the interview. If the staff person selected agrees to be present, the interview shall be held at a time during school hours when it does not involve an expense to the school. Failure to comply with the requirements of this section does not affect the admissibility of evidence in a criminal or civil proceeding.

(b) The Superintendent of Public Instruction shall notify each school district and each child protective agency, and the State Department of Social Services shall notify each of its employees who participate in the investigation of reports of child abuse, of the requirements of this section.

SEC. 52. Section 361.21 is added to the Welfare and Institutions Code, to read:

361.21. (a) The court shall not order the placement of a minor in an out-of-state group home, unless the court finds, in its order of placement, that both of the following conditions have been met:

(1) The out-of-state group home is licensed or certified for the placement of minors by an agency of the state in which the minor will be placed.

(2) The out-of-state group home meets the requirements of Section 7911.1 of the Family Code.

(b) At least every six months, the court shall review each placement made pursuant to subdivision (a) in order to determine compliance with that subdivision.

(c) A county shall not be entitled to receive or expend any public funds for the placement of a minor in an out-of-state group home unless the requirements of subdivisions (a) and (b) are met.

SEC. 53. Section 366 of the Welfare and Institutions Code is amended to read:

366. (a) The status of every dependent child in foster care shall be reviewed periodically as determined by the court but no less frequently than once every six months, as calculated from the date of the original dispositional hearing, until the hearing described in Section 366.25 or 366.26 is completed. The court shall determine the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, the continuing need to suspend sibling interaction, if applicable, pursuant to subdivision (c) of Section 16002, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and shall project a likely date by which the child may be returned to the home or placed for adoption or legal guardianship.

(b) Subsequent to the hearing, periodic reviews of each child in foster care shall be conducted pursuant to the requirements of Sections 366.3 and 16503.

(c) If the child has been placed out of state, each review described in subdivision (a) and any reviews conducted pursuant to Sections 366.3 and 16503 shall also address whether the out-of-state placement continues to be the most appropriate placement selection and in the best interests of the child.

(d) A child shall not be placed in an out-of-state group home, or remain in an out-of-state group home, unless the group home is in compliance with Section 7911.1 of the Family Code.

SEC. 54. Section 727.1 of the Welfare and Institutions Code is amended to read:

727.1. (a) Unless otherwise authorized by law, the court may not order the placement of a minor who is adjudged a ward of the court on the basis that he or she is a person described by either Section 601 or 602 in a private residential facility or program that provides 24-hour supervision, outside of the state, unless the court finds, in its order of placement, that all of the following conditions are met:

(1) In-state facilities or programs have been determined to be unavailable or inadequate to meet the needs of the minor.

(2) The out-of-state residential facility or program is licensed for the placement of minors by an agency of the state or states in which the minor will be placed or operates under and is inspected pursuant to standards comparable to those developed by the Board of Corrections for similar facilities or programs.

(3) The requirements of Section 7911.1 of the Family Code are met.

(b) If, upon inspection, the probation officer of the county in which the minor is adjudged a ward of the court determines that the out-of-state facility or program is not in compliance with the

standards required under paragraph (2) of subdivision (a), the probation officer may temporarily remove the minor from the facility or program. The probation officer shall promptly inform the court of the minor's removal, and shall return the minor to the court for a hearing to review the suitability of continued out-of-state placement.

(c) The court shall review each of these placements for compliance with the requirements of subdivision (a) at least once every six months.

(d) The county shall not be entitled to receive or expend any public funds for the placement of a minor in an out-of-state group home unless the conditions of subdivision (a) and (c) are met.

SEC. 55. Section 827 of the Welfare and Institutions Code is amended to read:

827. (a) (1) Except as provided in Section 828, a petition filed in any juvenile court proceeding, reports of the probation officer, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer, may be inspected only by the following:

(A) Court personnel.

(B) The district attorney, a city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law.

(C) The minor who is the subject of the proceeding.

(D) His or her parents or guardian.

(E) The attorneys for the parties, and judges, referees, other hearing officers, probation officers and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the minor.

(F) The superintendent or designee of the school district where the minor is enrolled or attending school.

(G) Members of the child protective agencies as defined in Section 11165.9 of the Penal Code.

(H) The State Department of Social Services to carry out its duties pursuant to Division 9 (commencing with Section 10000), and Part 5 (commencing with Section 7900) of Division 12 of the Family Code to oversee and monitor county child welfare agencies, children in foster care or receiving foster care assistance, and out-of-state placements.

(I) To authorized legal staff or special investigators who are peace officers who are employed by, or who are authorized representatives of, the State Department of Social Services, as necessary to the performance of their duties to inspect, license, and investigate community care facilities, and to ensure that the standards of care and services provided in those facilities are adequate and appropriate and to ascertain compliance with the rules and regulations to which the facilities are subject. The confidential information shall remain

confidential except for purposes of inspection, licensing, or investigation pursuant to Chapter 3 (commencing with Section 1500) and Chapter 3.4 (commencing with Section 1596.70) of Division 2 of the Health and Safety Code, or a criminal, civil, or administrative proceeding in relation thereto. The confidential information may be used by the State Department of Social Services in a criminal, civil, or administrative proceeding. The confidential information shall be available only to the judge or hearing officer and to the parties to the case. Names that are confidential shall be listed in attachments separate to the general pleadings. The confidential information shall be sealed after the conclusion of the criminal, civil, or administrative hearings, and shall not subsequently be released except in accordance with this subdivision. If the confidential information does not result in a criminal, civil, or administrative proceeding, it shall be sealed after the State Department of Social Services decides that no further action will be taken in the matter of suspected licensing violations. Except as otherwise provided in this subdivision, confidential information in the possession of the State Department of Social Services shall not contain the name of the minor.

(J) Members of children's multidisciplinary teams, persons or agencies providing treatment or supervision of the minor.

(K) Any other person who may be designated by court order of the judge of the juvenile court upon filing a petition.

(2) Any records or reports relating to a matter within the jurisdiction of the juvenile court prepared by or released by the court, a probation department, or the county department of social services, any portion of those records or reports, and information relating to the contents of those records or reports, shall not be disseminated by the receiving agencies to any persons or agencies, other than those persons or agencies authorized to receive documents pursuant to this section. Further, any of those records or reports, any portion of those records or reports, and information relating to the contents of those records or reports, shall not be made attachments to any other documents without the prior approval of the presiding judge of the juvenile court, unless they are used in connection with and in the course of a criminal investigation or a proceeding brought to declare a person a dependent child or ward of the juvenile court.

(b) (1) While the Legislature reaffirms its belief that juvenile court records, in general, should be confidential, it is the intent of the Legislature in enacting this subdivision to provide for a limited exception to juvenile court record confidentiality to promote more effective communication among juvenile courts, law enforcement agencies, and schools to ensure the rehabilitation of juvenile criminal offenders as well as to lessen the potential for drug use, violence, and other forms of delinquency.

(2) Notwithstanding subdivision (a), written notice that a minor enrolled in a public school, kindergarten to grade 12, inclusive, has been found by a court of competent jurisdiction to have committed

any felony or any misdemeanor involving curfew, gambling, alcohol, drugs, tobacco products, carrying of weapons, a sex offense listed in Section 290 of the Penal Code, assault or battery, larceny, vandalism, or graffiti shall be provided by the court, within seven days, to the superintendent of the school district of attendance. Written notice shall include only the offense found to have been committed by the minor and the disposition of the minor's case. This notice shall be expeditiously transmitted by the district superintendent to the principal at the school of attendance. The principal shall expeditiously disseminate the information to those counselors directly supervising or reporting on the behavior or progress of the minor. In addition, the principal may disseminate the information to any teacher or administrator directly supervising or reporting on the behavior or progress of the minor whom the principal believes needs the information to work with the pupil in an appropriate fashion, to avoid being needlessly vulnerable or to protect other persons from needless vulnerability.

Any information received by a teacher, counselor, or administrator under this subdivision shall be received in confidence for the limited purpose of rehabilitating the minor and protecting students and staff, and shall not be further disseminated by the teacher, counselor, or administrator, except insofar as communication with the juvenile, his or her parents or guardians, law enforcement personnel, and the juvenile's probation officer is necessary to effectuate the juvenile's rehabilitation or to protect students and staff.

An intentional violation of the confidentiality provisions of this section is a misdemeanor punishable by a fine not to exceed five hundred dollars ($500).

(3) If a minor is removed from public school as a result of the court's finding described in subdivision (b), the superintendent shall maintain the information in a confidential file and shall defer transmittal of the information received from the court until the minor is returned to public school. If the minor is returned to a school district other than the one from which the minor came, the parole or probation officer having jurisdiction over the minor shall so notify the superintendent of the last district of attendance, who shall transmit the notice received from the court to the superintendent of the new district of attendance.

(c) Each probation report filed with the court concerning a minor whose record is subject to dissemination pursuant to subdivision (b) shall include on the face sheet the school at which the minor is currently enrolled. The county superintendent shall provide the court with a listing of all of the schools within each school district, within the county, along with the name and mailing address of each district superintendent.

(d) Each notice sent by the court pursuant to subdivision (b) shall be stamped with the instruction: "Unlawful Dissemination Of This Information Is A Misdemeanor." Any information received from the

court shall be kept in a separate confidential file at the school of attendance and shall be transferred to the minor's subsequent schools of attendance and maintained until the minor graduates from high school, is released from juvenile court jurisdiction, or reaches the age of 18, whichever occurs first. After that time the confidential record shall be destroyed. At any time after the date by which a record required to be destroyed by this section should have been destroyed, the minor or his or her parent or guardian shall have the right to make a written request to the principal of the school that the minor's school records be reviewed to ensure that the record has been destroyed. Upon completion of any requested review and no later than 30 days after the request for the review was received, the principal or his or her designee shall respond in writing to the written request and either shall confirm that the record has been destroyed or, if the record has not been destroyed, shall explain why destruction has not yet occurred.

Except as provided in paragraph (2) of subdivision (b), no liability shall attach to any person who transmits or fails to transmit any notice or information required under subdivision (b).

SEC. 56. Section 5867.5 is added to the Welfare and Institutions Code, to read:

5867.5. (a) Beginning in the 1998–99 fiscal year, county mental health departments that receive full system of care funding, as determined by the State Department of Mental Health in consultation with counties, shall provide to children served by county social services and probation departments mental health screening, assessment, participation in multidisciplinary placement teams and specialty mental health treatment services for children placed out of home in group care, for those children who meet the definition of medical necessity, to the extent resources are available. These counties shall give first priority to children currently receiving psychoactive medication.

(b) The State Department of Mental Health shall develop, by June 1, 1999, an estimate of the extent to which mental health assessment and treatment resources are available to meet all of the following needs:

(1) Children placed in group care by county departments of social services and probation.

(2) Children placed in out-of-home care by county departments of social services.

(3) Children at risk of placement out of home who are receiving services from county departments of social services or probation.

(c) The estimate required by subdivision (b) shall include identification of specific resource gaps, including human resource gaps, in the delivery of specialty mental health services to children identified by county social services and probation.

(d) The State Department of Mental Health shall develop, with the assistance of the State Department of Social Services and the

Judicial Council , with participation by county mental health departments, county health departments, and county social services departments, and in consultation with group home providers and representatives of current or former foster youth and representatives of pediatricians and child and adolescent psychiatrists, by July 1, 1999, a procedure for review of treatment plans for children receiving prescribed psychoactive medication and who are placed in out-of-home care.

SEC. 57. Section 10609.3 of the Welfare and Institutions Code is amended 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.

(d) The department shall, with the approval of the federal government, amend the foster care state plan, provided for pursuant to Subtitle IV-E (commencing with Section 470) of the federal Social Security Act (42 U.S.C. Sec. 670, et seq.), and the child welfare services state plan (42 U.S.C. Sec. 622), to permit all eligible children be served by the Independent Living Program up to the age of 21 years.

SEC. 58. Section 11402 of the Welfare and Institutions Code is amended to read:

11402. In order to be eligible for AFDC-FC, a child shall 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) (1) The licensed family home of a nonrelative.

(2) The nonlicensed home of a nonrelative extended family home, when the child is placed pursuant to Section 362.7.

(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 18 years of age.

(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.

(h) An out-of-state group home, provided that the placement worker, in addition to complying with all other statutory requirements for placing a minor in an out-of-state group home, documents that the requirements of Section 7911.1 of the Family Code have been met.

SEC. 59. Section 11404.5 of the Welfare and Institutions Code is repealed.

SEC. 60. Section 11461 of the Welfare and Institutions Code is amended to read:

11461. (a) For children placed in a licensed or approved family home with a capacity of six or less, or in an approved home of a relative or nonrelated legal guardian, the per child per month rates in the following schedule shall be in effect for the period July 1, 1989, through December 31, 1989:

Age	Basic rate
0–4	$ 294
5–8	319
9–11	340
12–14	378
15–20	412

(b) (1) Any county that, as of October 1, 1989, has in effect a basic rate that is at the levels set forth in the schedule in subdivision (a), shall continue to receive state participation, as specified in subdivision (c) of Section 15200, at these levels.

(2) Any county that, as of October 1, 1989, has in effect a basic rate that exceeds a level set forth in the schedule in subdivision (a), shall continue to receive the same level of state participation as it received on October 1, 1989.

(c) The amounts in the schedule of basic rates in subdivision (a) shall be adjusted as follows:

(1) Effective January 1, 1990, the amounts in the schedule of basic rates in subdivision (a) shall be increased by 12 percent.

(2) Effective May 1, 1990, any county that did not increase the basic rate by 12 percent on January 1, 1990, shall do both of the following:

(A) Increase the basic rate in effect December 31, 1989, for which state participation is received by 12 percent.

(B) Increase the basic rate, as adjusted pursuant to subparagraph (A) by an additional 5 percent.

(3) (A) Except as provided in subparagraph (B), effective July 1, 1990, for the 1990–91 fiscal year, the amounts in the schedule of basic rates in subdivision (a) shall be increased by an additional 5 percent.

(B) The rate increase required by subparagraph (A) shall not be applied to rates increased May 1, 1990, pursuant to paragraph (2).

(4) Effective July 1, 1998, the amounts in the schedule of basic rates in subdivision (a) shall be increased by 6 percent. Notwithstanding any other provision of law, the 6-percent increase provided for in this paragraph shall, retroactive to July 1, 1998, apply to every county, including any county to which paragraph (2) of subdivision (b) applies, and shall apply to foster care for every age group.

(5) Notwithstanding any other provision of law, any increase that takes effect after July 1, 1998, shall apply to every county, including any county to which paragraph (2) of subdivision (b) applies, and shall apply to foster care for every age group.

(6) The increase in the basic foster family home rate shall apply only to children placed in a licensed foster family home receiving the basic rate or in an approved home of a relative or nonrelated legal guardian receiving the basic rate. The increased rate shall not be used to compute the monthly amount that may be paid to licensed foster family agencies for the placement of children in certified foster homes.

(d) (1) Beginning with the 1991–92 fiscal year, the schedule of basic rates in subdivision (a) shall be adjusted by the percentage changes in the California Necessities Index, computed pursuant to the methodology described in Section 11453, subject to the availability of funds.

(2) Any county that, as of the 1991–92 fiscal year, receives state participation for a basic rate that exceeds the amount set forth in the schedule of basic rates in subdivision (a) shall receive an increase each year in state participation for that basic rate of one-half of the percentage adjustments specified in paragraph (1) until the difference between the county's adjusted state participation level for its basic rate and the adjusted schedule of basic rates is eliminated.

(3) If a county has, after receiving the adjustments specified in paragraph (2), a state participation level for a basic rate that is below

the amount set forth in the adjusted schedule of basic rates for that fiscal year, the state participation level for that rate shall be further increased to the amount specified in the adjusted schedule of basic rates.

(e) (1) As used in this section, "specialized care increment" means an approved amount paid with state participation on behalf of an AFDC-FC child requiring specialized care to a home listed in subdivision (a) in addition to the basic rate. On the effective date of this section, the department shall continue and maintain the current ratesetting system for specialized care.

(2) Any county that, as of the effective date of this section, has in effect specialized care increments that have been approved by the department, shall continue to receive state participation for those payments.

(3) Any county that, as of the effective date of this section, has in effect specialized care increments that exceed the amounts that have been approved by the department, shall continue to receive the same level of state participation as it received on the effective date of this section.

(4) (A) Except for subparagraph (B), beginning January 1, 1990, specialized care increments shall be adjusted in accordance with the methodology for the schedule of basic rates described in subdivision (c). No county shall receive state participation for any increases in a specialized care increment which exceeds the adjustments made in accordance with this methodology.

(B) Notwithstanding subdivision (e) of Section 11460, for the 1993–94 fiscal year, an amount equal to 5 percent of the State Treasury appropriation for family homes shall be added to the total augmentation for the AFDC-FC program in order to provide incentives and assistance to counties in the area of specialized care. This appropriation shall be used, but not limited to, encouraging counties to implement or expand specialized care payment systems, to recruit and train foster parents for the placement of children with specialized care needs, and to develop county systems to encourage the placement of children in family homes. It is the intent of the Legislature that in the use of these funds, federal financial participation shall be claimed whenever possible.

(f) (1) As used in this section, "clothing allowance" means the amount paid with state participation in addition to the basic rate for the provision of additional clothing for an AFDC-FC child, including, but not limited to, an initial supply of clothing and school or other uniforms.

(2) Any county that, as of the effective date of this section, has in effect clothing allowances, shall continue to receive the same level as it received on the effective date of this section.

(3) Beginning January 1, 1990, clothing allowances shall be adjusted annually in accordance with the methodology for the schedule of basic rates described in subdivision (c). No county shall

be reimbursed for any increases in clothing allowances which exceed the adjustments made in accordance with this methodology.

SEC. 61. Section 11462 of the Welfare and Institutions Code 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, and the single rate established for each RCL.

(e) 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) (A) For new and existing providers requesting the establishment of an RCL, and for existing group home programs requesting an RCL increase, the department shall determine the RCL no later than 13 months after the effective date of the provisional rate. The determination of the RCL shall be based on a program audit of documentation and other information that verifies the level of care and supervision provided by the group home

program during a period of the two full calendar months or 60 consecutive days, whichever is longer, preceding the date of the program audit, unless the group home program requests a lower RCL. The program audit shall not cover the first six months of operation under the provisional rate. Pending the department's issuance of the program audit report that determines the RCL for the group home program, the group home program shall be eligible to receive a provisional rate that shall be based on the level of care and service that the group home program proposes it will provide. The group home program shall be eligible to receive only the RCL determined by the department during the pendency of any appeal of the department's RCL determination.

(B) A group home program may apply for an increase in its RCL no earlier than two years from the date the department has determined the group home program's rate, unless the host county, the primary placing county, or a regional consortium of counties submits to the department in writing that the program is needed in that county, that the provider is capable of effectively and efficiently operating the proposed 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.

(C) To ensure efficient administration of the department's audit responsibilities, and to avoid the fraudulent creation of records, group home programs shall make records that are relevant to the RCL determination available to the department in a timely manner. Except as provided in this section, the department may refuse to consider, for purposes of determining the rate, any documents that are relevant to the determination of the RCL that are not made available by the group home provider by the date the group home provider requests a hearing on the department's RCL determination. The department may refuse to consider for purposes of determining the rate, the following records, unless the group home provider makes the records available to the department during the field work portion of the department's program audit:

(i) Records of each employee's full name, home address, occupation, and social security number.

(ii) Time records showing when the employee begins and ends each work period, meal periods, split shift intervals, and total daily hours worked.

(iii) Total wages paid each payroll period.

(iv) Records required to be maintained by licensed group home providers under the provisions of Title 22 of the California Code of Regulations that are relevant to the RCL determination.

(D) To minimize financial abuse in the startup of group home programs, when the department's RCL determination is more than three levels lower than the RCL level proposed by the group home provider, and the group home provider does not appeal the

department's RCL determination, the department shall terminate the rate of a group home program 45 days after issuance of its program audit report. When the group home provider requests a hearing on the department's RCL determination, and the RCL determined by the director under subparagraph (E) is more than three levels lower than the RCL level proposed by the group home provider, the department shall terminate the rate of a group home program within 30 days of issuance of the director's decision. Notwithstanding the reapplication provisions in subparagraph (B), the department shall deny any request for a new or increased RCL from a group home provider whose RCL is terminated pursuant to this subparagraph, for a period of no greater than two years from the effective date of the RCL termination.

(E) A group home provider may request a hearing of the department's RCL determination under subparagraph (A) no later than 30 days after the date the department issues its RCL determination. The department's RCL determination shall be final if the group home provider does not request a hearing within the prescribed time. Within 60 days of receipt of the request for hearing, the department shall conduct a hearing on the RCL determination. The standard of proof shall be the preponderance of the evidence and the burden of proof shall be on the department. The hearing officer shall issue the proposed decision within 45 days of the close of the evidentiary record. The director shall adopt, reject, or modify the proposed decision, or refer the matter back to the hearing officer for additional evidence or findings within 100 days of issuance of the proposed decision. If the director takes no action on the proposed decision within the prescribed time, the proposed decision shall take effect by operation of law.

(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) 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.

(f) The standardized schedule of rates for fiscal year 1998–99 is:

Rate Classification Level	Point Ranges	FY 1998-99 Standard Rate
1	Under 60	$1,254
2	60- 89	1,567
3	90-119	1,879
4	120-149	2,191
5	150-179	2,502
6	180-209	2,815
7	210-239	3,127
8	240-269	3,440
9	270-299	3,751
10	300-329	4,064
11	330-359	4,375
12	360-389	4,688
13	390-419	5,003
14	420 & Up	5,314

(g) (1) For the 1999–2000 fiscal year, 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. The resultant amounts shall constitute the new standardized schedule of rates.

(2) Beginning with the 2000–01 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. The resultant amounts shall constitute the new standardized schedule of rates.

(h) The standardized schedule of rates pursuant to subdivisions (f) and (g) shall be implemented as follows:

(1) Any group home program which received an AFDC-FC rate in the prior fiscal year at or above the standard rate for the RCL in the current fiscal year shall continue to receive that rate.

(2) Any 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 the RCL rate for the current year.

(i) (1) 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.

(2) 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.

(3) The department shall annually conduct a county-by-county survey to determine the unmet placement needs of children placed pursuant to Section 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) For the 1998–99 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, 1998, except as provided in paragraph (3).

(3) (A) For the 1998–99 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 1998–99 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. The donations and contributions shall not be considered in any determination of maximum expenditures made by the department.

(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.

SEC. 62. Section 11463 of the Welfare and Institutions Code is amended to read:

11463. (a) The department, with the advice, assistance, and cooperation of the counties and foster care providers, shall develop, implement, and maintain a ratesetting system for foster family agencies.

No county shall be reimbursed for any percentage increases in payments, made on behalf of AFDC-FC funded children who are placed with foster family agencies, which exceed the percentage cost-of-living increase provided in any fiscal year beginning on January 1, 1990, as specified in subdivision (c) of Section 11461.

(b) The department shall develop regulations specifying the purposes, types, and services of foster family agencies, including the use of those agencies for the provision of emergency shelter care. Distinction for ratesetting purposes shall be drawn between foster family agencies which provide treatment of children in foster families and those which provide nontreatment services.

(c) The department shall develop and maintain regulations specifying the procedure for the appeal of department decisions about the setting of an agency's rate.

(d) On and after July 1, 1998, the schedule of rates, and the components used in the rate calculations specified in the department's regulations, for foster family agencies shall be increased by 6 percent, rounded to the nearest dollar. The resultant amounts shall constitute the new schedule of rates for foster family agencies.

SEC. 63. Section 11465 of the Welfare and Institutions Code is amended to read:

11465. (a) When a child is living with a parent who receives AFDC-FC benefits, the rate paid to the provider on behalf of the parent shall include an amount for care and supervision of the child.

(b) For each category of eligible licensed community care facility, as defined in Section 1502 of the Health and Safety Code, the department shall adopt regulations setting forth a uniform rate to cover the cost of care and supervision of the child in each category of eligible licensed community care facility.

(c) (1) On and after July 1, 1998, the uniform rate to cover the cost of care and supervision of a child pursuant to this section shall be increased by 6 percent, rounded to the nearest dollar. The resultant amounts shall constitute the new uniform rate.

(2) Subject to the availability of funds, for the 1999–2000 fiscal year and annually thereafter, these rates shall be adjusted for cost of living pursuant to procedures in Section 11453.

SEC. 64. Section 11466.21 is added to the Welfare and Institutions Code, to read:

11466.21. (a) (1) In accordance with subdivision (b), as a condition to receive an AFDC-FC rate for a group home program or a foster family agency program that provides treatment services, the provider shall arrange to have a financial audit conducted on an annual basis.

(2) The scope of the financial audit shall include all of the programs and activities operated by the provider and shall not be limited to those funded in whole or in part by the AFDC-FC program. The financial audits shall include, but not be limited to, an evaluation of the accounting and control systems of the provider.

(3) The provider shall have its financial audit made by certified public accountants or by state-licensed public accountants who have no direct or indirect relationship with the functions or activities being audited, or with the provider, its board of directors, officers, or staff.

(4) The provider shall have its financial audits made using generally accepted auditing standards applicable to private entities organized and operated on a nonprofit basis.

(5) (A) Each provider shall have the flexibility to define the calendar months included in its fiscal year.

(B) A provider may change the definition of its fiscal year. However, the financial audit conducted following the change shall cover all of the months since the last audit, even though this may cover a period that exceeds 12 months.

(b) (1) Except as provided for in paragraph (3), as a condition to receive an AFDC-FC rate that becomes effective on or after July 1, 1999, a provider shall submit a copy of its most recent financial audit as a component of any rate application, including an annual rate application, an application for a rate for a new program of an existing or new provider, an application for a change in a program's rate classification level, and an application for a program change.

(2) A rate application shall not be considered complete until and unless the most recent financial audit of the provider is submitted to the department.

(3) (A) For the period July 1, 1999, through June 30, 2000, a new provider that was incorporated on or after October 1, 1997, shall not be required to submit a copy of a financial audit as a component of its application for an AFDC-FC rate for a new program.

(B) Effective July 1, 2000, a new provider that has been incorporated for fewer than 12 calendar months shall not be required to submit a copy of a financial audit as a component of its application for an AFDC-FC rate for a new program.

(c) (1) The department shall develop regulations establishing a process for group home and foster family agency providers, with a total licensed capacity of 12 or fewer persons, to apply for and receive financial assistance for the conduct of the annual financial audit. In recognition of the fact that the costs of a financial audit will be higher for small providers, relative to their revenues and expenditures, than they will be for larger providers, financial assistance shall be provided on a sliding scale basis to offset the costs of the audit. An eligible provider may receive up to two thousand five hundred dollars ($2,500) annually, or one-half of the actual costs of the financial audit, whichever is less. The department shall implement this subdivision through the adoption of emergency regulations.

SEC. 65. Section 11467 of the Welfare and Institutions Code is repealed.

SEC. 66. Chapter 2.5 (commencing with Section 16160) is added to Part 4 of Division 9 of the Welfare and Institutions Code, to read:

CHAPTER 2.5. FOSTER CHILD OMBUDSMAN PROGRAM

16160. The Legislature finds and declares that the people of California have benefited from the establishment of a long-term care ombudsperson pursuant to Section 9710 of the Welfare and Institutions Code and a child care ombudsperson program pursuant to Section 1596.872a of the Health and Safety Code. It is the intent of the Legislature to provide similar protections for foster children by establishing a foster care ombudsperson program within the State Department of Social Services.

16161. The Office of the State Foster Care Ombudsperson shall be established as an autonomous entity within the department for the purpose of providing children who are placed in foster care, either voluntarily or pursuant to Section 300 and Sections 600 and following, with a means to resolve issues related to their care, placement, or services.

16162. The director, in consultation with a committee of interested individuals, shall appoint an ombudsperson qualified by training and experience to perform the duties of the office for a term of two years. The director shall select the committee members, the majority of whom shall be representatives of children's advocacy organizations and current or former foster youth.

16163. The department shall hire the necessary personnel to perform the functions of the office. Priority shall be given to former foster youth in hiring decisions.

16164. The Office of the State Foster Care Ombudsperson shall do all of the following:

(a) Disseminate information on the rights of children and youth in foster care and the services provided by the office. The information shall include notification that conversations with the office may not be confidential.

(b) Investigate and attempt to resolve complaints made by or on behalf of children placed in foster care, related to their care, placement, or services.

(c) Decide, in its discretion, whether to investigate a complaint, or refer complaints to another agency for investigation.

(d) Upon rendering a decision to investigate a complaint from a complainant, notify the complainant of the intention to investigate. If the office declines to investigate a complaint or continue an investigation, the office shall notify the complainant of the reason for the action of the office.

(e) Update the complainant on the progress of the investigation and notify the complainant of the final outcome.

(f) Document the number, source, origin, location, and nature of complaints.

(g) Compile and make available to the Legislature all data collected over the course of the year including, but not limited to, the number of contacts to the toll-free telephone number, the number of complaints made, the number of investigations performed by the office, the number of referrals made, and the number of unresolved complaints.

(h) Have access to any record of a state or local agency that is necessary to carry out his or her responsibilities, and may meet or communicate with any foster child in his or her placement or elsewhere.

16165. In his or her efforts to resolve complaints related to foster care, the ombudsperson may do all of the following:

(a) Conduct whatever investigation he or she deems necessary.

(b) Attempt to resolve the complaint informally.

(c) Submit a written plan to the relevant state or county agency recommending a course of action to resolve the complaint. If the ombudsperson makes a written recommendation, the state or county agency shall submit a written response to the ombudsperson within 30 business days.

16167. (a) A toll-free number shall be established for the office.

(b) Social workers shall provide foster children with the toll-free number for the office and verbal or written information regarding the existence and purpose of the office.

SEC. 67. 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 and most appropriate setting and 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 7950 of the Family 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. If the child has been placed in foster care out-of-state, the county social worker or a social worker on the staff of the social service agency in the state in which the child has been placed shall visit the child in a foster family home or the home of a relative at least every 12 months and submit a report to the court on each visit. For children in out-of-state group home facilities, visits shall be conducted at least monthly, pursuant to Section 16516.5.

(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 placement is made, the case plan shall include documentation of the provisions specified in subdivisions (b), (c), and (d) of Section 16002.

(7) When out-of-home placement is made in a foster family home, group home or other child care institution that is either a substantial distance from the home of the child's parent or out of state, the case plan shall specify the reasons why that placement is in the best interests of the child. When an out-of-state group home placement is recommended or made, the case plan shall, in addition, specify compliance with Section 7911.1 of the Family Code.

(8) 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.

(9) When out-of-home services are used and the goal is reunification, the case plan shall describe the services to be provided to assist in reunification and the services to be provided concurrently to achieve legal permanency if efforts to reunify fail.

(10) (A) 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.

(B) Parents and legal guardians shall be advised that, pursuant to Section 1228.1 of the Evidence Code, neither their signature on the child welfare services case plan nor their acceptance of any services prescribed in the child welfare services case plan shall constitute an admission of guilt or be used as evidence against the parent or legal guardian in a court of law. However, they shall also be advised that

the parent's or guardian's failure to cooperate, except for good cause, in the provision of services specified in the child welfare services case plan may be used in any hearing held pursuant to Section 366.21 or 366.22 as evidence.

(11) 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.

(h) The case plan documentation on sibling placements required under this section shall not require modification of existing case plan forms until the Child Welfare Services Case Management System is implemented on a statewide basis.

(i) The department, in consultation with the County Welfare Directors Association and other advocates, shall develop standards and guidelines for a model relative placement search and assessment process based on the criteria established in Section 361.3. These guidelines shall be incorporated in the training described in Section 16206. These model standards and guidelines shall be developed by March 1, 1999.

SEC. 68. Section 16501.2 is added to the Welfare and Institutions Code, to read:

16501.2. (a) The Legislature finds and declares all of the following:

(1) Safety, stability, and the permanence of families in the child welfare system are of paramount importance.

(2) Ongoing assessments that build on the strength of the child and family unit, and that identify desired outcomes, are critical in the development of appropriate case plans for children.

(3) If it is necessary to place a child in out-of-home care, the use of a formal child and family assessment can enhance the appropriateness of placement and the identification and delivery of services necessary to meet the child's needs and strengths, consistent with case plan goals.

(b) On or before December 31, 1998, the department shall issue to all county placing agencies and the courts, current best practice guidelines for the assessment of a child and the child's family unit. The guidelines shall include recommended methods for gathering certain background information on the child and the child's family unit, identifying appropriate services for the case plan, and methods

of monitoring and reassessing the case plan to best meet case plan goals. For children placed in group homes or foster family agencies, the guidelines shall include methods for identifying appropriate placement options, and monitoring the services provided by the group home or foster family agency to best address the strengths and needs of the child and the child's family unit.

(c) (1) The department shall conduct a pilot project to test the effectiveness of utilizing best practice standards for the assessment of children and families receiving child welfare and foster care services, for the purpose of identifying the strengths and needs of the family and the child, developing and monitoring appropriate case plans, and determining appropriate services.

(2) The pilot project shall meet all of the following conditions:

(A) On or before July 1, 1999, the department shall solicit participation in the pilot project by counties, and, to the extent possible, provide for broad geographical representation. On or before September 1, 1999, the department shall select pilot counties and begin operation of the pilot project.

(B) The pilot project shall use an assessment protocol or process developed by the department in collaboration with county agencies and other stakeholders.

(C) The pilot project shall be evaluated independently to judge the effectiveness of the assessment protocol or instrument, including whether the assessment provides adequate background data on the child and the child's family unit, improves achievement of case plan goals, is judged useful to the counties and service providers, and can be applied with ease.

(D) For children placed in group homes or foster family agencies, the assessment protocol or process developed pursuant to subparagraph (B) shall identify the strengths and needs of the child to be met by the placement program and methods for monitoring the delivery of services by the placement agencies.

(E) The assessment shall be sensitive to the ethnic and linguistic background of the children and families being assessed, and shall include, but not be limited to, the child's age, previous placement history, specific indicators, including living situation, social situation, medical situation, educational situation, vocational situation, emotional situation, behavioral situation, and legal, cultural, and religious history, and areas and activities of interest.

(d) In collaboration with county agencies and other stakeholders, and based on the results of the pilot project described in this section, the department shall develop a formal assessment process for children receiving foster care and child welfare services. On or before May 1, 2001, the department shall inform the Legislature on the status of the pilot project described in this section, and the proposed assessment protocol or process with recommendations for its implementation, including incorporation of the assessment process into the child welfare services case management system.

(e) Upon satisfactory completion of the pilot project described in this section, and development of a formal assessment instrument or process, the department, in collaboration with representatives of county placing agencies, training academies, and the California Social Work Education Center, shall integrate training and technical assistance on the family assessment guidelines into the curriculum of the regional training academies.

SEC. 69. Section 16516.5 is added to the Welfare and Institutions Code, to read:

16516.5. (a) Notwithstanding any other provision of law or regulation, all foster children placed in group homes by county welfare departments or county probation departments shall be visited at least monthly by a county social worker or probation officer.

(b) Notwithstanding Section 10101, the state shall pay 100 percent of the nonfederal costs associated with the monthly visitation requirement in subdivision (a) in excess of the minimum semiannual visits required under current regulations.

SEC. 70. 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 ratesetting system.

(b) Rates for foster family agency programs participating under this chapter shall be set according to the appropriate service and rate level based on the level of services provided to the eligible child and the certified foster family. For an eligible child placed from a group home program, the service and rate level shall not exceed the rate paid for group home placement. For an eligible child assessed by the county interagency review team as at imminent risk of group home placement or psychiatric hospitalization, the appropriate service and rate level for the child shall be determined by the interagency review team at time of placement. In all of the service and rate levels, the foster family agency programs shall:

(1) Provide social work services with average caseloads not to exceed eight children per worker, except that social worker average caseloads for children in Service and Rate Level E 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) (A) (i) Provide a minimum average range of service per month for children in each service and rate level in a participating foster family agency, 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:

Service and Rate Level	In−Home Support Counselor Hours Per Month
A	98−114 hours
B	81−97 hours
C	64−80 hours
D	47−63 hours

(ii) Children placed at Service and Rate Level E shall receive crisis intervention and other support services on a flexible, as needed, basis from an in-home support counselor. The foster family agency shall provide one full-time in-home support counselor for every 20 children placed at this level.

(B) When the interagency review team and the foster family agency agree that alternative services are in the best interests of the child, the foster family agency may provide the following types of services in lieu of in-home support services required by subparagraph (A):

(i) Therapy.

(ii) Behavior modification services.

(iii) Support counselor services.

(iv) Psychotropic medication and monitoring.

(v) Respite services.

(vi) Family therapy to aid in family reunification.

(vii) Education liaison services to maintain the child in the classroom.

(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 required by subdivision (b) for the child's service and rate level, the rate shall be adjusted to reflect the level of service actually provided, and an overpayment may be established and recovered by the department.

(d) (1) On and after July 1, 1998, the standard rate schedule of service and rate levels shall be:

Service and Rate Level	Fiscal Year 1998-99 Standard Rate
A	$3,957
B	$3,628
C	$3,290
D	$2,970
E	$2,639

(2) Beginning with the 1999–2000 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. The resultant amounts shall constitute the new standard rate schedule for foster family agency programs participating under this chapter.

(e) Rates for foster family agency programs participating under this chapter shall not exceed Service and Rate Level 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 Service and Rate 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 Service and Rate Level 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 service and rate level higher than Service and Rate Level E for additional periods of up to six months each.

(f) It is the intent of the Legislature that 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). The department shall work with other potentially affected state departments to ensure that duplication of payment or services does not occur.

SEC. 71. Chapter 12.86 (commencing with Section 18987.6) is added to Part 6 of Division 9 of the Welfare and Institutions Code, to read:

CHAPTER 12.86. CHILDRENS SERVICES PROGRAM DEVELOPMENT

18987.6. It is the intent of the Legislature to do all of the following:

(a) Permit all counties to provide children with service alternatives to group home care through the development of expanded family-based services programs and to expand the capacity of group homes to provide services appropriate to the changing needs of children in their care.

(b) Encourage collaboration among persons and entities including, but not limited to, parents, county welfare departments, county mental health departments, county probation departments, county health departments, special education local planning agencies, school districts, and private service providers for the purpose of planning and providing individualized services for children and their birth or substitute families.

(c) Ensure local community participation in the development of innovative delivery of services by county placing agencies and service providers and the use of the service resources and expertise of nonprofit providers to develop family-based and community-based service alternatives.

18987.61. (a) Each county may enter into performance agreements with private, nonprofit agencies to encourage innovation in the delivery of children's services, to develop services not available in the community, and to promote change in the child welfare services system.

(b) In developing the agreements, counties and service providers shall pursue services that enhance the ability of children to remain in the least restrictive, most family-like setting possible and promote services that address the needs and strengths of individual children and their families.

(c) Programs developed pursuant to this section shall operate within the county, or in another county with the approval of that county.

(d) Agreements pursuant to subdivision (a) shall be for a period of up to three years.

(e) A county shall provide a report to the director within three months of the end of each agreement to report on the details of the agreement, the results achieved during its operation, and the applicability of the approach to a wider population. The director shall make these reports available to the Legislature upon request.

18987.62. (a) Upon request from a county, the director may waive regulations governing foster care payments or the operation of group homes to enable counties to implement the agreements established pursuant to Section 18987.61. Waivers granted by the director shall be applicable only to services provided under the terms of the agreement and for the duration of the agreement. A waiver shall only be granted when all of the following apply:

(1) The agreement promises to offer a worthwhile test of an innovative approach or to encourage the development of a new service for which there is a recognized need.

(2) The regulatory requirement prevents the implementation of the agreement.

(3) The requesting county proposes to monitor the agreement through performance measures that ensure that the purposes of the waived regulation will be achieved.

(b) The director shall take steps that are necessary to prevent the loss of any substantial amounts of federal funds as a result of the waivers granted under this section. The waiver may specify the extent to which the requesting county shall share in any cost resulting from any loss of federal funding.

(c) The director shall not waive regulations that apply to the health and safety of children served by participating private agencies.

(d) The director shall notify the appropriate policy and fiscal committees of the Legislature whenever waivers are granted and when a waiver of regulations was required for the implementation of the county's proposed agreement. The director shall identify the reason why the development of the services outlined by the agreement between the county and the service provider are hindered by the regulations to be waived.

SEC. 72. (a) The State Department of Social Services shall convene a working group of representatives of County Welfare Directors, the Chief Probation Officers, foster and former foster youth, group home providers, and other interested parties convene a working group to develop protocols outlining the roles and responsibilities of placing agencies and group homes regarding emergency and nonemergency placements of foster children in group homes.

(b) The department shall submit a report obtained from the working group containing sample protocols to the appropriate policy and fiscal committees of the Legislature by May 1, 1999.

(c) The model protocols shall at a minimum address all of the following:

(1) Relevant information regarding the child and family that placement workers shall provide to group homes, including health, mental health, and education information pursuant to Section 16010 of the Welfare and Institutions Code.

(2) Appropriate orientations to be provided by group homes for foster children and, if appropriate, their families, after a decision to place has been made.

(3) County and provider responsibilities in ensuring the child receives timely access to treatment and services to the extent they are available identified in the child's case plan and treatment plan, including multidisciplinary assessments provided in counties involved in the Systems of Care Program under Part 4 (commencing with Section 5850) of Division 5 of the Welfare and Institutions Code.

(4) County and provider responsibilities in the periodic monitoring of foster children to ensure the continued appropriateness of the placements and the continued progress toward achieving the case plan and treatment plan goals.

(5) Appropriate mechanisms, timelines, and information sharing regarding discharge planning.

SEC. 73. The State Department of Social Services may adopt emergency regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code to implement Sections 7911, 7911.1, and 7911.2 of the Family Code, Sections 1520.1, 1522.02, 1522.04, 1522.41, 1522.42, 1538, and paragraph (3) of subdivision (a) of Section 1522.43 of the Health and Safety Code, and Sections 11463, 11465, 16501.1, and 16516.5 of the Welfare and Institutions Code, and shall adopt emergency regulations for Section 11462 of the Welfare and Institutions Code, as affected by this act. The adoption of regulations pursuant to this section shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, or safety. The regulations shall become effective immediately upon filing with the Secretary of State. The regulations shall not remain in effect more than 180 days unless the adopting agency complies with all of the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, as required by subdivision (e) of Section 11346.1 of the Government Code.

SEC. 74. The department shall convene a community care facility law enforcement task force. At the first meeting, the participants shall identify a chairperson who shall, by March 1, 1999, identify and recommend to the appropriate policy and fiscal committees of the Legislature specific statutory and regulatory changes to permit efficient and effective criminal prosecution of, and to permit efficient and effective civil recovery of public funds from, individuals associated with licensed facilities, who are involved in illegal activities surrounding public funds paid to providers for the care of, and delivery of services to clients, of community care facilities. The community care facilities task force shall also make recommendations regarding the duties of the Fraud Investigation Unit established by the Budget Act of 1998. Participants in the task force shall include, but not be limited to, the State Department of Social Services, the Department of Justice, law enforcement officers, probation and welfare workers, district attorneys, providers, public defenders, and current or former foster youths. The task force shall also evaluate potential consequences of any proposed changes with respect to group home providers who do not engage in illegal activities.

SEC. 75. (a) The State Department of Social Services, under the direction of the Health and Welfare Agency and in collaboration with appropriate public and private organizations representing state and county agencies, as well as group homes and foster family agencies, current or former foster youth, and other interested parties, shall reexamine the role of out-of-home placements currently available for children served within the child welfare services system. The focus of this reexamination shall be the role of group care within a family-based system of care, including group homes, foster family agencies or certified parents, and foster family homes or foster

parents. The Legislature finds and declares that the task of defining the role of group care and establishing the underlying policy is a critically important step to reforming the current out-of-home care system. The reexamination process shall be conducted in collaboration with the primary stakeholders, and shall be based on empirical research and "best practices" data. The process shall include gathering research, holding forums, and entering into partnerships with academia and other stakeholders to complete the task.

(b) Upon a determination of the role of group care pursuant to the reexamination required by subdivision (a), the Health and Welfare Agency shall continue the reexamination to the next phase, which shall be the development of the related programmatic and administrative requirements for group care. The necessary supporting requirements for the development of these programmatic and administrative requirements shall include, but are not limited to, the following:

(1) Definition of the needs of children to be served, including differentiation if appropriate for the unique needs of wards and dependents.

(2) Program design and standards.

(3) Licensing categories.

(4) Rates and ratesetting procedures.

(5) Performance agreements.

(6) Outcomes, outcome indicators, and performance measures.

(7) Mechanisms to ensure continuous quality improvement.

(8) Related oversight and regulatory scheme.

(c) The Health and Welfare Agency shall, in implementing subdivision (b), give particular attention to the role of state licensing in determining quality of care and the need for a new licensing category or categories to better meet the needs of the children served. It is the intent of the Legislature that licensing of group care should not be based on a one-size-fits-all model. Instead, the needs of children should be foremost and options made available to effectively serve children who pose a risk of flight or require treatment interventions currently not available, or both, such as locked perimeters and structured programs that permit different housing arrangements, clothing restrictions, visitation restrictions, and other treatment-based requirements. If it is determined by the Health and Welfare Agency that such a new licensing category or categories is immediately necessary to meet the standards expressed in this section, the Health and Welfare Agency shall develop and submit proposals to the Legislature in order to take this action.

(d) The Health and Welfare Agency shall develop a proposal, including a work plan and timeframes to complete this process, and submit it to the Legislature by April 1, 1999.

(e) Any proposal or recommendation submitted pursuant to this section shall not become effective unless enacted pursuant to statute.

SEC. 76. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

SEC. 77. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or 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 changes in provisions of law relating to children placed in foster care, as well as in provisions relating to facilities licensed by the State Department of Social Services, at the earliest possible time, it is necessary that this act go into immediate effect.

CHAPTER 312

An act to add and repeal Chapter 3.5 (commencing with Section 60450) of Part 33 of the Education Code, relating to instructional materials, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 19, 1998. Filed with Secretary of State August 19, 1998.]

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

SECTION 1. Chapter 3.5 (commencing with Section 60450) is added to Part 33 of the Education Code, to read:

CHAPTER 3.5. THE SCHIFF-BUSTAMANTE STANDARDS-BASED INSTRUCTIONAL MATERIALS PROGRAM

60450. (a) This act shall be known and may be cited as the Schiff-Bustamante Standards-Based Instructional Materials Program.

(b) It is the intent of the Legislature that school districts use the resources provided pursuant to this chapter and any other available resources to ensure that pupils in kindergarten and grades 1 to 12, inclusive, be provided with instructional materials in the core curriculum areas of language arts, mathematics, history/social science, and science that are aligned with state content standards as adopted by the State Board of Education pursuant to Section 60605 in 1997 and 1998. It is further the intent of the Legislature that the funding provided pursuant to this chapter supplement and not supplant funding for instructional materials provided from other sources.

60450.5. (a) The State Department of Education shall apportion funds appropriated for purposes of this chapter on the basis of an equal amount per pupil enrolled in public elementary schools and high schools, excluding summer school, adult, and regional occupational program and center enrollment, during the preceding fiscal year, as certified by the Superintendent of Public Instruction based on California Basic Education Data System (CBEDS) data. This method of allocation, using enrollment instead of average daily attendance, shall not be construed as a precedent for future allocation methods for instructional materials or for any other education program.

(b) For the purposes of this chapter, the term "school districts" means school districts, county offices of education, and charter schools, and the term "local governing board" means the governing board of a school district, the county board of education, or the governing body of a charter school.

60451. Each school district shall expend funds received pursuant to this chapter for the sole purpose of purchasing instructional materials in the core curriculum that are aligned to content standards for pupils in kindergarten and grades 1 to 12, inclusive, that meet all of the following requirements:

(a) The instructional materials are aligned with content standards as adopted by the State Board of Education in 1997 or 1998.

(b) The instructional materials for pupils in kindergarten and grades 1 to 8, inclusive, have been adopted by the State Board of Education pursuant to Chapter 2 (commencing with Section 60200) of Part 33, using criteria developed subsequent to the adoption of content standards.

(c) The instructional materials for pupils in grades 9 to 12, inclusive, are basic instructional materials, as defined in subdivision (a) of Section 60010, that have been reviewed and approved, through a resolution adopted by the local governing board, as being aligned

with the content standards as adopted by the State Board of Education in 1997 or 1998.

60451.5. (a) Each school district that receives funds pursuant to this chapter shall purchase instructional materials aligned to language arts, mathematics, history/social science, or science content standards from funds appropriated for this purpose in the Budget Act of 1998 or the act that adds this chapter. Priority shall be given to the purchase of mathematics instructional materials.

(b) Each school district that receives funds pursuant to this chapter shall purchase instructional materials aligned to content standards in language arts, mathematics, history/social science, or science from funds appropriated in the 1999–2000 fiscal year and the two subsequent fiscal years for the purposes of this chapter.

60452. (a) Allowances received by school districts pursuant to this chapter shall be deposited into a separate account as specified by the Superintendent of Public Instruction. These allowances, including any interest generated by them, shall be used only for the purchase of instructional materials pursuant to this chapter. Interest posted to the account shall be based upon reasonable estimates of monthly balances in the account and the average rate of interest earned by other funds of the school district.

(b) All purchases of instructional materials made with funds from this account shall conform to law and the applicable rules and regulations adopted by the State Board of Education, and the superintendent of a school district that purchases instructional materials with these funds shall provide written assurance of this conformance to the Superintendent of Public Instruction. Commencing September 1, 1999, the Superintendent of Public Instruction shall withhold the allowance established pursuant to Section 60452.5 from any school district that has failed to file a written assurance for the prior fiscal year. The Superintendent of Public Instruction may restore the amount withheld once the school district provides the written assurance.

(c) The office of the Controller, in cooperation with the State Department of Education, shall include procedures to review compliance with this section in its independent audit instructions.

60452.5. (a) In each of the fiscal years from 1999–2000 to 2001–02, inclusive, the sum of two hundred fifty million dollars ($250,000,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction for allocation to school districts pursuant to this chapter. All funds appropriated for the purposes of this chapter shall be allocated on the basis of an equal amount per pupil enrolled in public elementary schools and high schools, as set forth in Section 60450.5, and as reported for the year prior to the allocation of funds.

(b) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by subdivision (a) shall be deemed to be

"General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 1999–2000, 2000–01, and 2001–02 fiscal year, as appropriate, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code, for the 1999–2000, 2000–01, and 2001–02 fiscal year.

(c) The allocation made pursuant to subdivision (a) shall be made no later than October 1 of each fiscal year.

60453. This chapter shall become inoperative on June 30, 2002, and as of January 1, 2003, is repealed, unless a later enacted statute, which is enacted before January 1, 2003, 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 for the important reforms in this act to take effect with the commencement of the 1998-99 fiscal year, it is necessary that this act take effect immediately.

CHAPTER 313

An act to amend Section 44669 of, to repeal Sections 44670.6, 48645.7, 52022, 52854, and 56242 of, and to repeal and add Article 7.5 (commencing with Section 44579) of Chapter 3 of Part 25 of, the Education Code, relating to education finance, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 19, 1998. Filed with Secretary of State August 19, 1998.]

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

SECTION 1. Article 7.5 (commencing with Section 44579) of Chapter 3 of Part 25 of the Education Code is repealed.

SEC. 2. Article 7.5 (commencing with Section 44579) is added to Chapter 3 of Part 25 of the Education Code, to read:

Article 7.5. Instructional Time and Staff Development Reform Program

44579. This article shall be known as, and may be cited as, the Instructional Time and Staff Development Reform Program.

44579.1. (a) There is hereby established the Instructional Time and Staff Development Reform Program. It is the intent of the Legislature that this program enhance staff development opportunities for classroom personnel, but this article shall not be construed to provide the sole source of funding for staff development activities for school personnel or to limit in any way the amount or type of staff development that is provided to school district personnel from other resources.

(b) The State Department of Education shall submit draft regulations for the purpose of implementing this article to the State Board of Education for its review and approval. The State Board of Education shall adopt regulations for the purpose of implementing this article pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) (1) Each fiscal year, the Superintendent of Public Instruction shall provide each eligible school district and county office of education applying for a grant pursuant to this article with a staff development allowance of two hundred seventy dollars ($270) per day, for up to three days, for each certificated classroom teacher and one hundred forty dollars ($140) per day for up to one day for each classified classroom instructional aide and certificated teaching assistant who participates in staff development instructional methods, including teaching strategies, classroom management and other training designed to improve pupil performance, and academic content in the core curriculum areas that are provided by the school district or county office of education.

(2) Each fiscal year, the Superintendent of Public Instruction, shall provide each eligible charter school applying for a grant pursuant to this article with a staff development allowance of two hundred seventy dollars ($270) per day, for up to three days, for each classroom teacher and one hundred forty dollars ($140) per day for up to one day for each classroom instructional aide and assistant who participates in staff development instructional methods, including teaching strategies, classroom management and other training designed to improve pupil performance, and academic content in the core curriculum areas that are provided by the charter school.

(d) To be eligible for a grant pursuant to this article, the staff development program provided by the school district, charter school, or county office of education shall meet all of the following requirements:

(1) Meet local educational priorities as defined by the governing board of the school district, charter school, or county board of education.

(2) Be consistent with regulations defining staff development activities eligible to receive funding under this section.

(e) To qualify as a funded participant, each eligible participant shall be present for the full staff development day, and records of attendance shall be maintained in a manner to be prescribed in

regulations. Each staff development day shall be at least as long as the full-time instructional workday for certificated or classified instructional employees of the school district. For purposes of this section, a single staff development day may be conducted over several calendar days.

(f) (l) Except as provided pursuant to paragraph (2), if the staff development day is conducted after completion of an instructional day, it may not be held on a minimum day for which a parent or guardian was notified pursuant to subdivision (c) of Section 48980.

(2) For staff working in multitrack, year-round schools, not more than two staff development days may be scheduled for "off track" teachers at a school with a minimum day scheduled. In this event, teachers at the multitrack, year-round school who are being paid for service on the minimum days are not eligible for that day of funding under this article.

(g) Notwithstanding Section 45203, probationary and permanent employees in the classified service may not receive regular pay on days during which staff development is offered pursuant to this article unless they are required to report for duty on those days.

(h) A charter school may be eligible to receive funding under this chapter only if the school certifies that it meets the minimum instructional time requirements applicable to school districts.

(i) This section shall be operative in any fiscal year only to the extent that funds are provided for its purposes in the annual Budget Act.

44579.2. (a) The Superintendent of Public Instruction shall disburse grant funds for this program in the following manner:

(1) Beginning in fiscal year 1999-2000, an advance disbursement shall be made following passage of the annual Budget Act. This disbursement shall be provided to all school districts, county offices of education, and charter schools that participated in the Instructional Time and Staff Development Reform Program in the prior fiscal year, and shall be limited to 25 percent of the amount apportioned to each entity in the prior year.

(2) Each year a disbursement of grant funding to all applicants shall be made following receipt of applications submitted pursuant to Section 44579.1, adjusted as necessary by the amount disbursed pursuant to paragraph (1). If a school district, county office of education, or charter school that participated in this program in the prior fiscal year fails to submit an application, all funds disbursed to that school district, county office of education, or charter school pursuant to paragraph (l) shall be deducted from that agency's next monthly principal apportionment payment.

(3) A final adjustment to the amounts paid pursuant to paragraph (2) shall be made following receipt by the Superintendent of Public Instruction of certification by the superintendent of the school district, the county superintendent of schools, or chief officer of the charter school, as appropriate, of the total number of teacher-days

attendance at staff development training that complies with all of the applicable provisions of this article and the regulations adopted by the State Board of Education.

(4) If the amount disbursed pursuant to this article to a school district, county office of education, or charter school during any fiscal year differs from the amount to which the district, county office of education, or charter school was entitled pursuant to this article, the Superintendent of Public Instruction shall, at the next monthly apportionment following discovery of the error, withhold from, or add to, the apportionment payment made during that month, the amount of the excess or deficiency, as the case may be.

(b) Notwithstanding any other provision of law, excesses withheld or deficiencies added by the Superintendent of Public Instruction under this section shall be added to, or allowed from, any portion of the State School Fund.

44579.3. (a) The governing board of a school district may provide additional days of pupil instruction that are in excess of 180 days of instruction per school year instead of the qualifying staff development activities set forth in this article. If a school district chooses to replace any number of staff development days that are funded under this article, with a pupil instruction days, the additional instructional days shall be at least as long as the average length of the instructional day that the district is required to provide in order to qualify for funding pursuant to Part 26 (commencing with Section 46000).

(b) This section does not apply to a county office of education or a county board of education.

44579.4. (a) For the 1998–99 school year, a school district may request the State Board of Education to provide a waiver of instructional time requirements if both of the following conditions are met:

(1) The district provides evidence to the board that the waiver is necessary only because the repeal of the authority of school districts to provide staff development during instructional time results in the district being unable to reasonably meet the instructional time requirements.

(2) The school district had a school calendar, or a schoolsite plan adopted in accordance with law, either of which was approved by the governing board prior to the operative date of this section, or not more than 30 days after that date, that authorizes the use of instructional days for staff development.

(b) A school district that receives a waiver for the 1998–99 school year shall ensure that both of the following occur:

(1) The combined instructional time and staff development time provided by the district during the 1998–99 school year pursuant to the waiver meets or exceeds 180 days or the equivalent number of annual instructional minutes determined pursuant to Article 8 (commencing with Section 46200) of Chapter 2 of Part 26.

(2) The actual instructional time provided is at least 172 days or the equivalent number of annual instructional minutes determined pursuant to Article 8 (commencing with Section 46200) of Chapter 2 of Part 26.

(c) The maximum amount of instructional time that may be waived may not exceed the number of days for which the school district had previously approved for staff development days within the school calendar, or in a schoolsite plan adopted in accordance with law.

(d) A school district that receives a waiver for the 1998-99 school year under this section shall only be eligible to receive staff development funding under this article for each day of staff development offered under this article that replaces a staff development day previously authorized under Sections 44670.6, 48645.7, 52022, 52854, or 56242 and utilized during the 1997–98 school year and that was included in a school calendar, or schoolsite plan adopted in accordance with law, that was approved by the local governing board prior to the operative date of this section or not more than 30 days after that date. For purposes of this subdivision, a staff development day funded pursuant to the Staff Development Buy-Out Program in the 1997–98 school year shall be funded in the 1998-99 school year with no requirement that this day replace an additional staff development day that was previously authorized pursuant to Sections 44670.6, 48645.7, 52022, 52854, or 56242.

SEC. 3. Section 44669 of the Education Code is amended to read:

44669. (a) Notwithstanding any other provision of law, for the purposes of implementing a program established pursuant to this article, the State Board of Education may waive any part, article, or section of this code, or any regulation adopted by the State Board of Education that implements this code upon request by a governing board of a school district on a districtwide basis or on behalf of its schools or programs, if the governing board does both of the following:

(1) Provides written documentation that the exclusive representative of certificated employees concurs with the request. Failure of the exclusive representative of certificated employees to concur in the waiver request shall constitute cause for its denial.

(2) Demonstrates that the waiver request is necessary to implement the proposed pilot project.

(b) Subdivision (a) does not apply to Section 51513 or Part 26 (commencing with Section 46000), other than Section 46206.

SEC. 4. Section 44670.6 of the Education Code is repealed.

SEC. 5. Section 48645.7 of the Education Code is repealed.

SEC. 6. Section 52022 of the Education Code is repealed.

SEC. 7. Section 52854 of the Education Code is repealed.

SEC. 8. Section 56242 of the Education Code is repealed.

SEC. 9. It is the intent of the Legislature to expand the Instructional Time and Staff Development Program established in

Article 7.5 (commencing with Section 44579) of Chapter 3 of Part 25 of the Education Code in subsequent fiscal years to add additional state-funded staff development days as funding becomes available in the annual Budget Act.

SEC. 10. Any unexpended balance, as of June 30, 1999, of the appropriation that is made for purposes of this act in the Budget Act of 1998 is hereby appropriated to the Superintendent of Public Instruction for the purpose of providing funding for up to two additional staff development days for classified classroom instructional aides and certificated teaching assistants, provided that the staff development is consistent with Article 7.5 (commencing with Section 44579) of Chapter 3 of Part 25 of the Education Code.

SEC. 11. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make statutory changes necessary for the implementation of the Budget Act of 1998, it is necessary that this act take effect immediately.

CHAPTER 314

An act to add Article 6.5 (commencing with Section 14198) to Chapter 7 of Part 3 of Division 9 of, and to add and repeal Section 14198 of, the Welfare and Institutions Code, relating to health, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 19, 1998. Filed with Secretary of State August 19, 1998.]

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

SECTION 1. Article 6.5 (commencing with Section 14198) is added to Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 6.5. Regional Burn and Trauma Center Program

14198. (a) The Regional Burn and Trauma Center Program is hereby established to fund a portion of the construction costs associated with replacing a burn and trauma center that would serve a significant proportion of Medi-Cal beneficiaries.

(b) Any private nonprofit general acute care hospital that contracts with a county and meets the following requirements shall qualify for supplemental reimbursement as described in this section:

(1) The only burn and trauma service in the region was originally licensed under the county hospital license.

(2) The private hospital assumed operation of the regional burn and trauma service originally licensed under the county hospital license.

(3) The county will phase out operation of the county hospital facilities by October 2003.

(4) The contract with the county requires the private hospital to construct and operate a burn and trauma facility to preserve that specialty care as a regional service.

(5) The county hospital met disproportionate share eligibility criteria for the 1997–98 fiscal year.

(c) The hospital shall submit its plans to the Office of Statewide Health Planning and Development on or before December 31, 2000.

(d) As of June 30, 2003, any moneys remaining in the Regional Burn and Trauma Center Program Fund created by Section 14198.2 shall revert to the General Fund.

(e) This section shall remain in effect only until June 30, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before June 30, 2003, deletes or extends that date.

14198.1. (a) A hospital or its successor entity, that has received funds pursuant to Section 14198 shall maintain burn and trauma services and continue to provide medical services to beneficiaries of Medi-Cal or a successor program through the year 2028.

(b) The state and a hospital subject to this section shall negotiate in good faith to ensure continued hospital participation in the Medi-Cal program and to ensure adequate access to services for Medi-Cal patients.

14198.2. (a) The Regional Burn and Trauma Center Fund is hereby created in the State Treasury, under the administrative control of the State Department of Health Services, for the purposes specified in Section 14198 upon appropriation by the Legislature. Except as otherwise limited by this section, the fund shall consist of the following:

(1) All public moneys transferred by public agencies to the department for deposit into the fund, as permitted under Section 433.51 of Title 42 of the Code of Federal Regulations or any other applicable federal medicaid laws.

(2) All private moneys donated by private individuals or entities to the department for deposit in the fund, as permitted under applicable federal medicaid laws and regulations. Private donations may come from private individuals, foundations, or entities that do not meet the definition of a provider entity, as contained in federal regulatory law.

(3) Any amounts appropriated by the Legislature for this program may be transferred to the fund.

(4) Any interest that accrues on amounts in the fund.

(b) Any public moneys transferred by public agencies, or private moneys donated by private individuals or entities to the department for deposit in the fund, shall be expended before any state

appropriation is utilized as the nonfederal match of the supplemental reimbursement. Total combined funds made available under this section shall not exceed fifty million dollars ($50,000,000). It is the intent of the Legislature that funding from the General Fund shall not exceed twenty-five million dollars ($25,000,000).

(c) Unless otherwise prohibited by law, any public or private agency transferring moneys to the fund may utilize for that purpose any revenues, grants, or allocations received from the state for health care programs or purposes. Unless otherwise prohibited by law, a public or private agency may also utilize its general operating funds, or any other public or private moneys or revenues for purposes of transfers to the fund.

(d) The department shall have discretion as to whether to accept moneys offered to the department for deposit in the fund. If the department accepts moneys pursuant to this section, the department shall obtain federal matching funds to the full extent permitted by law. The department shall accept only those funds that are certified by the transferring entity or donating entity as qualifying for federal financial participation under the terms of the Medicaid Voluntary Contributions and Provider-Specific Tax Amendments of 1991 (Public Law 102-234), or Section 433.51 of Title 42 of the Code of Federal Regulations, as applicable, and may return any funds transferred or donated in error.

(e) Moneys in the fund shall be used as the source for the nonfederal share of payments to the Regional Burn and Trauma Center to be constructed pursuant to this article. Moneys shall be allocated from the fund by the department and matched by federal funds in accordance with customary Medi-Cal accounting procedures for purposes of payments under subdivision (e). Distributions from the fund shall be supplemental to any and all other amounts that this hospital would have received under the selective provider contracting program.

(f) For purposes of recognizing the Regional Burn and Trauma Center replacement costs incurred for services rendered to Medi-Cal beneficiaries, payments from the fund shall be negotiated between the California Medical Assistance Commission and the entity contracting under this article. Payments from the fund shall be used solely for the purposes identified in the contract between the hospital and the state.

(g) The state shall be held harmless for any federal disallowance resulting from this section. A hospital receiving supplemental reimbursement pursuant to this section shall be liable for any reduced federal financial participation resulting from the implementation of this section with respect to that hospital. The state may recoup any federal disallowance from the hospital.

(h) Funds available pursuant to this article shall only be used for projects, or for that portion of projects, that are available and

accessible to Medi-Cal patients treated under this article or by successor programs.

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 implement the Regional Burn and Trauma Center Program as soon as possible, in accordance with funds made available in the Budget Act of 1998 for this purpose, it is necessary that this act take effect immediately.

CHAPTER 315

An act to add Chapter 3.33 (commencing with Section 44720) to Part 25 of the Education Code, relating to mathematics education, and making an appropriation therefor.

[Approved by Governor August 19, 1998. Filed with Secretary of State August 19, 1998.]

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

SECTION 1. The Legislature finds and declares the following:

(a) Recent assessments have shown that a majority of California's children do not possess the mathematical skills essential for success and competition in a global economy. The National Assessment of Educational Progress (NAEP) showed that California's pupils performed near the bottom of the 50 states. According to the Third International Mathematics and Science Study (TIMSS), which measured mathematics achievement of 9- and 13-year-old pupils from 41 countries, 13-year-old mathematics pupils in the United States scored higher than pupils in only seven other countries. None of those seven countries are serious business competitors in the global marketplace. Additionally, United States 12th grade pupils scored far below the international average, with only two countries ranking lower.

(b) Recently, the State Board of Education adopted content standards for mathematics in kindergarten and grades 1 to 12, inclusive. To allow pupils to meet the highest level of mathematical skills and understanding, teachers must be knowledgeable about the new standards and have a complete understanding of the underlying mathematics. However, many teachers lack the in-depth understanding of mathematics necessary to effectively teach at the level required by the new standards. It is essential, therefore, that a mathematics professional development program be implemented to ensure that pupils are able to meet the new rigorous mathematics standards.

SEC. 2. Chapter 3.33 (commencing with Section 44720) is added to Part 25 of the Education Code, to read:

CHAPTER 3.33. TRAINING FOR TEACHERS OF MATHEMATICS WHO TEACH PUPILS IN GRADES 4 TO 12, INCLUSIVE

44720. The State Department of Education shall administer a program of grants to school districts and county superintendents of schools for in-service training of teachers of mathematics who teach pupils enrolled in grades 4 to 12, inclusive.

44721. As a condition for receiving funds pursuant to this chapter, a school district or county superintendent of schools shall certify to the State Department of Education all of the following:

(a) That funds received pursuant to this chapter are to be expended only for the purpose of providing in-service training in mathematics instruction to teachers who provide direct instructional services in mathematics to pupils enrolled in any of grades 4 to 12, inclusive, and to schoolsite administrators of those teachers.

(b) To the extent feasible with available funds, that all the teachers in the school district who provide direct instructional services in mathematics to pupils enrolled in grades 4 to 12, inclusive, have received, or will receive, the training provided pursuant to this chapter.

(c) That funds received pursuant to this chapter that are to be expended for contract providers of in-service training will be expended only for providers approved pursuant to Section 44722.

(d) That funds received pursuant to this chapter that are to be expended for training provided by a school district's or county superintendent of schools' own current employees will include all of the elements listed in subdivision (e).

(e) That funds received pursuant to this chapter shall be expended only for the purpose of providing programs of in-service training in mathematics instruction that address all of the following subjects:

(1) The mathematics content standards adopted by the State Board of Education in 1997.

(2) In-depth understanding of the mathematics underlying the adopted content standards for pupils in kindergarten and in grades 1 to 12, inclusive.

(3) The curriculum framework and program advisories, if any, that are based on the mathematics content standards adopted by the State Board of Education in 1997.

(4) The mathematics performance standards, if and when they are adopted by the State Board of Education, related to adopted mathematics content standards.

(5) The assessments, if and when they are adopted by the State Board of Education, that are aligned with mathematics content

standards adopted by the State Board of Education pursuant to Section 60605.

(6) Replicated research on how mathematical skills are acquired.

(7) Replicated research on methods of teaching mathematics that produce measurable growth on a validated assessment of at least one grade level during a school year of instruction.

(f) That funds received pursuant to this chapter are to be expended only for programs of in-service training that do not cause a reduction in pupil instructional time.

44722. (a) The State Board of Education, shall develop a list of contract providers of in-service training in mathematics instruction that have been approved by the board pursuant to this section.

(b) The State Department of Education shall provide staff support to the State Board of Education in carrying out its responsibilities pursuant to this section.

(c) Any person, or public, private, or private nonprofit entity, that seeks to appear on the list of providers of in-service training in mathematics shall submit an application to the State Board of Education that includes the curricula of the program that will provide the training described in all components of subdivision (e) of Section 44721, in the time and manner required by the board. The State Board of Education may contract out for specific additional assistance in the evaluation of applications. The State Board of Education shall state the reasons for its approval of any application received pursuant to this subdivision and any decision of the board shall be based exclusively on the criteria established pursuant to subdivision (d).

(d) The State Board of Education shall establish criteria for the evaluation of providers of in-service training in mathematics instruction that meet the requirements of subdivision (e) of Section 44721 and that include in their training program a procedure for the evaluation of the effectiveness of the training on teacher knowledge, skills, and abilities.

(e) The State Board of Education shall maintain, update regularly, and make available to school districts through print and electronic media a list of providers of in-service training in mathematics instruction that have been approved by the board pursuant to this section.

(f) The State Board of Education may study the effectiveness of any program of in-service training provided pursuant to this chapter.

44724. The State Department of Education shall administer the grant application process. An application from a school district and county superintendent of schools shall include the following:

(a) Certification by the governing board of the school district or the county board of education that the requirements of Section 44721 shall be met.

(b) A description of how the school district or county superintendent of schools shall address, to the extent feasible, the following:

(1) Augmentation of resources for mathematics instruction staff development through the use of funds available from other local, state, and federal sources.

(2) Involvement of the parents and guardians of pupils enrolled in the school district or attending education programs operated by the county superintendent of schools.

(3) A description of how the school district or county superintendent of schools intends to provide teachers time to collaborate, discuss, and reflect on, and to the degree possible, be coached on the classroom implementation of what has been provided in staff development sessions.

44725. The State Department of Education shall provide a copy of the provider list as part of the application and information packet provided to school districts and county superintendents of schools. The department shall award competitive grants and allocate funds to school districts and county superintendents of schools on the basis of equal dollars per teacher and administrator trained. The amount of funding per teacher or administrator trained shall be established by the State Board of Education based on fee information received from providers. The amount of funding provided per teacher or administrator trained may not exceed the equivalent fee charged by a provider.

SEC. 3. The sum of one hundred fifty thousand dollars ($150,000) is hereby appropriated from the General Fund to the State Department of Education according to the following schedule:

(a) Seventy-five thousand dollars ($75,000) for allocation to the State Board of Education for its costs in reviewing provider applications pursuant to Chapter 3.33 (commencing with Section 44720) of Part 25 of the Education Code.

(b) Seventy-five thousand dollars ($75,000) for purposes of providing staff support by the State Department of Education for Chapter 3.33 (commencing with Section 44720) of Part 25 of the Education Code.

SEC. 4. Notwithstanding any other provision of law, funds appropriated in the 1997–98 Regular Session of the Legislature for purposes of Chapter 3.3 (commencing with Section 44720) of Part 25 of the Education Code shall be available for expenditure for three fiscal years.

SEC. 5. This act shall become operative only if AB 2442 of the 1997–98 Regular Session is enacted and becomes operative.